HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
REGULAR MEETING

February 9, 2017
7:00 P.M.
CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA

AGENDA

1. CALL TO ORDER

2. ROLL CALL

3. CONSENT ITEMS

   i. Approval of minutes, January 12, 2017
   ii. Approval of draft decisions in cases:

   a. T15-0576; Kellybrew v. Lewis

   b. T15-0420; Sabrah v. Beacon

   c. T15-0374 & T16-0175; Didrickson v. Dang

4. OPEN FORUM

5. NEW BUSINESS

   i. Appeal Hearings in cases:

   a. <u>Consolidated cases</u>
   T15-0068; Desta v. Wong
   T15-0069; Menigistu v. Wong

   b. <u>Related Cases</u>
   T15-0372; Menigistu v. Wong
   T16-0141; Menigistu v. Wong

   c. Discussion and Possible Action on Board Attendance

6. SCHEDULING AND REPORTS

7. ADJOURNMENT

Accessibility. The meeting is held in a wheelchair accessible facility. Contact the office of the City Clerk, City Hall, One Frank Ogawa Plaza, or call (510) 238–3611 (voice) or (510) 839–6451 (TTY) to arrange for the following services: 1) Sign interpreters; 2) Phone ear hearing device for the hearing impaired; 3) Large print, Braille, or cassette tape text for the visually impaired The City of Oakland complies with applicable City, State and Federal disability related laws and regulations protecting the civil rights of persons with environmental illness/multiple chemical sensitivities (EI/MCS). Auxiliary aids and services and alternative formats are available by calling (510) 238-3716 at least 72 hours prior to this event.

Foreign language interpreters may be available from the Equal Access Office (510) 239-2368. Contact them for availability. Please refrain from wearing **strongly scented products** to this meeting.

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

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

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

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

CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

Regular Meeting
January 12, 2017
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA

DRAFT MINUTES

1. CALL TO ORDER

The HRRRB was called to order at 7:05 p.m. by Board Chair, Jessie Warner.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Tyfahra Singleton	Tenant		X	
Beverly Williams	Homeowner			X
Karen Friedman	Landlord	X		
Noah Frigault	Tenant	X		
Ramona Chang	Landlord	X		
Jessica Warner	Homeowner	X		

Staff Present

Richard Illgen	Deputy City Attorney
Kent Qian	Deputy City Attorney
Connie Taylor	Rent Adjustment Program Manager

3. CONSENT ITEMS

i. Approval of Minutes for December 8, 2016
ii. Approval of draft decisions in:

a. L14-0065; CNML Properties LLC v. Tenants
b. T15-0360; Harrison v. Solares

N. Figault made a motion to approve the draft minutes with corrections. K. Friedman seconded. The Board voted as follows:

Aye: N. Frigault, J. Warner, R. Chang, K. Friedman
Nay: 0
Abstained: 0

The motion was approved by consensus.

Speakers:

Stephen Judson

J. Warner made a motion that staff make changes suggested by City Attorney which will be reviewed by the Board Chair and not returned to the Board. K. Friedman offered friendly amendment that Board members will receive a copy of corrected draft decisions by e-mail. R. Chang seconded. The Board voted as follows:

Aye: N. Frigault, J. Warner, R. Chang, K. Friedman
Nay: 0
Abstained: 0

The motion was approved by consensus.

4. OPEN FORUM

Speakers:

James Vann
Kathleen Solaris

5. NEW BUSINESS

i. Appeal Hearing in cases:

a. T15-0374; Didrickson v. Dang

Appearances:

Landlord

Ted Dang
Collin Dyer

Tenants

Carlos Didrickson
Glenda Didrickson

Rebuttal

All parties offered rebuttal

Board Discussion

After Board discussion and questions to both parties, N. Frigault made a motion to affirm the decision based on substantial evidence presented by the Hearing Officer. J. Warner seconded. The Board voted as follows:

Aye: N. Frigault, J. Warner, R. Chang,
Nay: K. Friedman
Abstained: 0

The motion carried.

a. T16-0175; Didrickson v. Dang

J. Warner made a motion to affirm the Hearing Officer's decision based on substantial evidence presented by the Hearing Officer. N. Frigault seconded. The Board voted as follows:

Aye: N. Frigault, J. Warner, R. Chang
Nay: K. Friedman
Abstained: 0

b. T15-0576; Kellybrew v. Lewis

Appearances:

Tenant

James Kellybrew

Landlord

James L. Lewis

Rebuttal

All parties offered rebuttal.

Board Discussion

After Board discussion and questions to both parties, K. Friedman made a motion to affirm the Hearing Officer's decision based on substantial evidence to support it. R. Chang seconded. The Board voted as follows:

Aye: N. Frigault, J. Warner, R. Chang, K. Friedman
Nay: 0
Abstained: 0

The motion was approved by consensus.

c. T15-0420; Sabrah v. Beacon

Appearances:

Tenant

Waleed Sabrah

Landlord

Erin Young

Rebuttal

All parties offered rebuttal.

Board Discussion

After Board discussion and questions to both parties, K. Friedman made a motion to remand the case for a hearing on all of the issues based on the fact that the document asking for a continuance by both parties was received by the Rent Program as noted in the activity log of the case file. N. Frigault seconded. The Board voted as follows:

Aye: N. Frigault, J. Warner, R. Chang, K. Friedman
Nay: 0
Abstained: 0

The motion carried by consensus.

7. SCHEDULING AND REPORTS

1. Schedule discussion of Board attendance.
2. Schedule discussion and possible action on Just Cause Regulations for a meeting in February, as many Board members will be out of town on January 26, 2017.

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8. ADJOURNMENT

J. Warner made motion to adjourn. N. Frigualt seconded. The meeting was adjourned by consensus at 9:55 p.m.

CITY OF OAKLAND

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

TEL (510) 2383721
FAX(510)238-6181
TDD(510)238-3254

HOUSING, RESIDENTIAL, RENT AND RELOCATION BOARD

DRAFT APPEAL DECISION

CASE NUMBER: **T15-0576, Kellybrew v. Lewis**

APPEAL HEARING: **January 12, 2017**

PROPERTY ADDRESS: **201 Athol Ave., No. 107**
Oakland, CA

APPEARANCES: **James Kellybrew Tenant Appellant**
James Lewis Owner Appellee

Procedural Background

The tenant filed a petition alleging decreased housing services and a code violation. The Hearing Decision denied the tenant petition.

Grounds for Appeal-Owner

The tenant appealed the Hearing Decision on the following grounds:

- The decision is not supported by substantial evidence;

Appeal Decision

After Board discussion and questions to both parties K. Friedman moved to affirm the Hearing Officer's decision based on substantial evidence to support it. R. Chang seconded .

The Board voted as follows:

Aye: N. Frigault, K. Friedman, R. Chang. J. Warner

Nay: 0
Abstain:

The motion was approved by consensus.

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.

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

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

DATE

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CITY OF OAKLAND

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

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

Housing, Residential Rent and Relocation Board (HRRRB)

APPEAL DECISION

CASE NUMBER:	**T15-0420, Sabrah v. Beacon**
APPEAL HEARING:	**January 12, 2017**
PROPERTY ADDRESS:	**37 Moss Avenue, No. 10 Oakland, CA**
APPEARANCES:	**Waleed Sabrah — Tenant Appellant Erin Young — Owner Representative**

Procedural Background

The tenant filed a petition on August 11, 2015, which contested a monthly rent increase from $1,277.00 to $1,340.00 and also claimed decreased housing services. The tenant requested a postponement of the hearing scheduled for December 15, 2015, which was granted, and the hearing was re-scheduled for February 11, 2016.

Pursuant to Section 8.22.110-Hearing Procedure-A-Postponements- a party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

On January 27, 2016, the tenant requested a second postponement on the grounds that he was attending a conference in Anaheim on February 11, 2016. The reason was that the tenant just realized that he was attending a trade show in Anaheim on the date of the hearing. He did not provide any documentation of pre-arranged travel as of December 15, 2015, the date of the Order which granted the first continuance.

On February 8, 2016, the tenant requested mediation but did not submit any written request for a mediation.

The Hearing Officer determined that the tenant had already been granted a continuance, the second request for postponement was received two weeks prior to the hearing on February 11, 2016, and concluded that this did not constitute an extraordinary circumstance.

The tenant did not appear at the Hearing and the Hearing Officer dismissed the tenant petition.

Grounds for Appeal

The tenant filed an appeal on February 8, 2016, and contends the following:

- The decision is inconsistent with OMC Chapter 8.22, Rent Board regulations or prior decisions of the Board.
- The decision is not supported by substantial evidence;

Appeal Decision

After Board discussion and questions to both parties, K. Friedman moved to remand the case for a hearing on all the issues based on the fact that the document asking for a continuance by both parties was received by the Rent Program as noted in the activity log of the case file. N. Frigault seconded. The Board voted as follows:

Aye: J. Warner, K. Friedman, N. Frigault, R. Chang
Abstain 0
Nay 0

The motion was approved by consensus.

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.

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_____ _____

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

DATE

CITY OF OAKLAND

P.O. BOX 70243, OAKLAND, CA 94612-2043 TEL (510) 238-3721
Department of Housing and Community Development FAX (510) 238-6181
Rent Adjustment Program TDD (510) 238-3254

Housing, Residential Rent and Relocation Board (HRRRB)

DRAFT APPEAL DECISIONS

CASE NUMBER: **T15-0374, Didrickson v. Dang**

APPEAL HEARING: **January 12, 2017**

PROPERTY ADDRESS: **2230 Lakeshore Ave., No. 7**
Oakland, CA

APPEARANCES:

Carlos Didrickson	**Tenant**
Glenda Didrickson	**Tenant**
Ted Dang	**Owner Representative**
Collin Dyer	**Owner Representative**

Procedural Background

The tenants filed a petition which contested a rent increase from $2,725 to $2,895, effective August 1, 2015, and also claimed decreased housing services.

Hearing Decision

The Hearing Decision stated that the tenants' base rent was $2,875.93. and granted a 18% restitution for decreased housing services which encompassed various time periods. The amount of restitution granted totaled $2,302.21. The Hearing Decision also granted a continuing decrease of 9% for ongoing decreased housing services.

Grounds for Appeal

The owner filed an appeal on February 19, 2016, contending that the decision raises a new policy issue that has not been decided by the Board. The

tenants also filed an appeal on February 19, 2016, and stated that the decision is inconsistent with decisions issued by other hearing officers.

Appeal Decision

After Board discussion and questions to both parties N. Frigault moved to affirm the Hearing Decision based on substantial evidence presented by the Hearing Officer. J. Warner seconded. The Board voted as follows:

Aye: N. Frigault, J. Warner, R. Chang
Nay: K. Friedman

The motion carried.

CASE NO. & NAME	**T16-0175-Didrickson v. Dang**
APPEAL HEARING:	**January 12, 2017**
PROPERTY ADDRESS:	**2230 Lakeshore Ave., No. 7 Oakland, CA**
APPEARANCES:	**Carlos Didrickson Tenant Glenda Didrickson Tenant Ted Dang Owner Representative Collin Dyer Owner Represent**

Procedural Background

The tenants contested a rent increase from $2,725 to $2,875.93 effective April 1, 2016, and from $2,725.00 to $3,043.00 effective August 2015, and claimed decreased housing services, code violations, no written summary of the justification for the increases and no concurrent RAP notice.

Hearing Decision

The Hearing Decision took official notice of the base rent of $2,875.93 and Order regarding restoration of rent upon repairs in Case No. T15-0374, and granted a monthly C.P.I. increase of $48.89, totaling $2,924.82.

Due to a rent overpayment of $4,370.00 the monthly rent was set at $2,054.67 fromSeptember through November 2016, $2,328.82 from December 2016 through March 2017 and reduction of $364.17 from April 2017 to August 2017.

Grounds for Appeal

The owner filed an appeal on August 23, 2016, on the following grounds:

- The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board;
- The decision is inconsistent with decisions issued by other hearing officers.
- The decision is not supported by substantial evidence.

Appeal Decision

J. Warner moved to affirm the Hearing Officer's decision based on substantial evidence presented by the Hearing Officer. N. Frigault seconded. The Board voted as follows:

Aye: N. Frigault, J. Warner, R. Chang
Nay: K. Friedman
Abstained: 0

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.

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

_____ _____

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

DATE

CHRONOLOGICAL CASE REPORT
CONSOLIDATED CASES

Case No.:	T15-0068 & T15-0069
Case Name:	Desta v. Wong & Mengistu v. Wong
Property Address:	80 Fairmont Avenue, Oakland, CA
Parties:	Tigist Desta & Mengistu (Tenants) Ming Wong (Landlord)

LANDLORD APPEAL:

Activity	Date
Tenant Petition filed	January 29, 2015
Landlord Response filed	March 11, 2015
Hearing Decision issued	December 2, 2015
Landlord Appeal filed	December 17, 2015

RECEIVED

DEC 17 2015

OAKLAND RENT ADJUSTMENT

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721	**APPEAL**

Appellant's Name	Landlord ☑ Tenant ☐
MING WONG	

Property Address (Include Unit Number)

80 FAIRMOUNT AVE
OAKLAND, CA. 94611

Appellant's Mailing Address (For receipt of notices)	Case Number
PO BOX 51346 SAN JOSE, CA. 95151	T15-0068
	Date of Decision appealed 12/2/2015

Name of Representative (if any)	Representative's Mailing Address (For notices)

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

1. ☐ **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** *You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.*

2. ☑ **The decision is inconsistent with decisions issued by other hearing officers.** *You must identify the prior inconsistent decision and explain how the decision is inconsistent.*

3. ☑ **The decision raises a new policy issue that has not been decided by the Board.** *You must provide a detailed statement of the issue and why the issue should be decided in your favor.*

4. ☑ **The decision is not supported by substantial evidence.** *You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.*

5. ☑ **I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.** *You must explain how you were denied a sufficient opportunity and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.*

6. ☐ **The decision denies me a fair return on my investment.** *You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.*

7. ☑ Other. *You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached* 6 *. 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 12/18, 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:

Name	TIGIST DESTA
Address	80 FAIRMOUNT AVE.
City, State Zip	OAKLAND, CA. 94611
Name	
Address	
City, State Zip	

[signature]	12/13/2015
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	**DATE**

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

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

December 13, 2015

City of Oakland
250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor
Oakland, CA. 94612

Re: appeal to T15-0068 hearing decision

Rent Board Committee of City of Oakland,

With regard to the assertion that owner's notice for rent increase has no legal effect, I am appealing the hearing decision on the following grounds:

1. As stated on page 10 of Owner's Guide to the Rent Adjustment Program, an owner's petition is not required before giving the tenant a rent increase, therefore the rent increase notices have legal effect without a Decision for an owner's petition

2. On page 6 of Landlord's Guide to Rent Adjustment published on the City of Oakland Rent Adjustment website, it states that "pre-approval of a rent increase is not required under the law", and that the pre-approval is only optional if an owner finds it more convenient

3. If an owner pre-approval petition is optional, then the decision on this petition is not a precondition for a rent increase

4. The Rent Adjustment Ordinance does not preclude an owner to increase the rent prior to receiving a Decision from the Rent Adjustment Program for an optional owner petition

5. The hearing officer's decision on this case is not consistent with a decision by another hearing officer. In the hearing decision for case T15-0110, the hearing officer considers owner's rent increase notice valid even though a decision for the owner's rent increase petition is not final

6. There is only one optional owner petition L15-0007 filed regarding to this rent increase, not multiple petitions as the hearing officer claims, thus the legal doctrine res judicata does not applied

Regarding to the decreased housing service argument, the hearing office ignores the inconsistency in the tenant's testimony and disregards evidence provided by the rodent proofing professionals the owner hired.
I am appealing the hearing decision about decreased housing service on the following grounds:

1. When questioned during the hearing, the tenant states that she does not remember when the rodent issue started and ended(please reference to audio recording of the hearing)

2. The hearing officer then asks leading questions and even offers suggestions to the tenant on the time frame during which the rodent issue lasted(please reference to audio recording of the hearing)

3. The hearing officer disregards repeated clarification by the owner during the hearing that Rodent Proofing professionals were hired to seal the building, not exterminator. As a result, during the whole process no rodent found dead or alive(please reference to audio recording of the hearing)

4. The hearing officer disregards the fact that Reliable Rodent Solution has concluded twice that the building is rodent free on 12/8/2014, and again on 3/18/2015(see attached reports I have originally submitted with my landlord response to tenant's petition)

5. Based on writing on the back of the pictures allegedly showing rodent dropping, the pictures were taken in 8/2014, which is inconsistent with tenant's testimony on the time frame for the decreased housing service

6. None of the indoor pictures the tenant has taken in 8/2014 is discernible to be credible as proof to the tenant's claim

7. The only pictures taken in April 2015 are pictures of minor repairs unrelated to tenant's rodent claim

8. The tenants did not communicate about alleged rodent issue until March 9, 2015, coincidentally after the rent increase was to take effect(see attached owner's letters addressed to the tenant and the RAP board, originally submitted with owner's response to tenant's petition)

9. The hearing officer in this case has improperly influenced tenant's testimony, arbitrarily considered inconsistent evidence provided by the tenant as credible

10. The hearing officer has largely disregarded evidence provided by professionals the owner had hired

Please find attached reports from Reliable Rodent Solution, letters sent to the tenant and the RAP board regarding the alleged rodent issue, originally submitted with owner's response to the tenant's petition.

Sincerely,

Ming Wong

Subject: 12/8 appt details

From: Info (info@reliablerodentsolutions.com)

To: wongmg@yahoo.com;

Date: Friday, December 12, 2014 10:37 AM

Good Morning Ming,

As of the last appt on 12/8 the traps were clear, meaning that you are rodent free. If there is any evidence of activity in the future call the office so we can schedule an appt to seal any new entry points that new rodents may have made. You are covered under the one year guarantee til Nov 2015. Thank you and have a great weekend

Reliable Rodent Solutions, Inc.
Phone: (925) 395-6110
Email: info@reliablerodentsolutions.com
Web Site: www.reliablerodentsolutions.com

Subject: 80 Fairmount Ave report

From: Reliable Rodent Solutions (reliablerodentsolutions@gmail.com)

To: wongmg@yahoo.com;

Date: Friday, March 20, 2015 11:06 AM

Hi Ming
Here is a progress report for the last appointment on 3/18 for us to look for points of entry:
Technicians notes: Office Notes for Call Back: thoroughly checked the perimeter and it's absolutely secure. thoroughly crawled the crawl space and it's absolutely secure. there is no smell and no carcasses, traps still set. one of the tenants said they haven't seen or heard any rats only the smell coming from the crawl space. which was not coming from the crawl space in my opinion.

Those notes are directly from the technician who was there on 3/18. since there are no points of entry and the traps were still set, there is no need for us to come and check the traps. For any more questions please call the office thank you

March 20, 2015

Solomon Tefera
Tigist Tefera
80 Fairmount Ave.
Oakland, Ca. 94611

Dear Tenants,
Regarding to rodent issue, you have all the facts wrong.
I have hired Reliable Rodent Solution to rodent proof the property in October 2014. They have sealed any possible entry into the building from the outside of the property. Then they set traps in the crawl space to get rid of any rodent hiding inside. The property has been rodent free since November 2014. There is no poison used in the whole process, and they have been coming back to check the traps periodically. The latest visit was on March 18, 2015. There is no sign of any rodent dead or alive, or bad smell in the crawl space and inside the building. Your claim of dead rodents in the building is completely baseless and irresponsible.
Furthermore, you have been very uncooperative by refusing multiple requests and attempts to inspect your unit and make necessary repairs by me or contractors hired by me. Your hostile treatment of the contractor I hire to repair your unit has refused to come back to do the job. It's very disingenuous for you to claim the matter urgent yet not allow the contractor to do his job when he shows up this week.
Enclosed please find the latest report from Reliable Rodent Solutions.

Regards,
Ming Wong

April 19, 2015

City of Oakland
250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor
Oakland, CA. 94612

Re: T15-0068

Dear Hearing Officer:

Regarding to tenant's claim of problems at 80 Fairmount Ave, Oakland, here is my response.
There were series of repairs done to the building including the tenant's unit since I took over in December 2010. The major repairs include leaking water pipes, clogged swage, drainage system around the building and in the laundry room to prevent flooding during the heavy rainy season. There are many other repairs and increased housing service costs that Mr. and Mrs. Tefera are not even aware of.
Most recently the building were rodent proofed by a company called Reliable Rodent Solutions. The building has been declared rodent free by Reliable Rodent Solutions. There is no poison used in the whole process. Enclosed please find the summary of status of their work. There is no sign of any rodent dead or alive, or bad smell in the crawl space and inside the building.
The tenants have not been maintaining the unit in a clean and sanitary condition where food scraps and cooking spice have been seen left out and spilled in the open in the kitchen that could have attracted unwanted pests. I have communicated to the tenants of their responsibility based on advice from Reliable Rodent Solutions.
I have been very prompt and responsive to address requests by all tenants at 80 Fairmount resolving issues over the years.
On the other hand, Mr. and Mrs. Tefera have been very uncooperative by not responding to multiple requests to inspect their unit in the past. They have also been refusing attempts by me or contractors hired by me to make necessary repairs after they claim to have urgent problems.
I am appalled that Mr. and Mrs. Tefera would misrepresent the facts just to avoid any rent increase.
Please also find enclosed my response letter dated 3/20/2015 to the letter dated 3/9/2015 by Mr. and Mrs. Tefera regarding the rodent issue.

Sincerely,

Ming Wong

RECEIVED

DEC 17 2015

OAKLAND RENT ADJUSTMENT

City of Oakland
Residential Rent Adjustment Program
250 Frank Ogawa Plaza, Suite 5313
Oakland, California 94612
(510) 238-3721

APPEAL

Appellant's Name
MING WONG

Landlord ☑ **Tenant** ☐

Property Address (Include Unit Number)
86 FAIRMOUNT AVE.
OAKLAND, CA. 94611

Appellant's Mailing Address (For receipt of notices)
PO BOX 51346
SAN JOSE, CA. 95151

Case Number T15-0069

Date of Decision appealed 12/2/2015

Name of Representative (if any)

Representative's Mailing Address (For notices)

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

1. ☐ **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** *You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.*

2. ☑ **The decision is inconsistent with decisions issued by other hearing officers.** *You must identify the prior inconsistent decision and explain how the decision is inconsistent.*

3. ☑ **The decision raises a new policy issue that has not been decided by the Board.** *You must provide a detailed statement of the issue and why the issue should be decided in your favor.*

4. ☑ **The decision is not supported by substantial evidence.** *You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.*

5. ☑ **I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.** *You must explain how you were denied a sufficient opportunity and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.*

6. ☐ **The decision denies me a fair return on my investment.** *You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.*

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7. ☑ Other. *You must attach a detailed explanation of your grounds for appeal. Submissions to the Boa[illegible] are limited to 25 pages from each party. Number of pages attached* [1] *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 12/18, 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:

Name	FREHEWIT MENGISTU
Address	86 FAIRMOUNT AVE.
City, State Zip	OAKLAND, CA. 94611
Name	
Address	
City, State Zip	

[signature] **SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE**	12/13/2015 **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.

December 13, 2015

City of Oakland
250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor
Oakland, CA. 94612

Re: appeal to T15-0069 hearing decision

Rent Board Committee of City of Oakland,

I am appealing the hearing decision on the following grounds:

1. As stated on page 10 of Owner's Guide to the Rent Adjustment Program, an owner's petition is not required before giving the tenant a rent increase, therefore the rent increase notices have legal effect without a Decision for an owner's petition

2. On page 6 of Landlord's Guide to Rent Adjustment published on the City of Oakland Rent Adjustment website, it states that "pre-approval of a rent increase is not required under the law", and that the pre-approval is only optional if an owner finds it more convenient

3. If an owner pre-approval petition is optional, then the decision on this petition is not a precondition for a rent increase

4. The Rent Adjustment Ordinance does not preclude an owner to increase the rent prior to receiving a Decision from the Rent Adjustment Program on an optional owner petition

5. The hearing officer's decision on this case is not consistent with a decision by another hearing officer. In the hearing decision for case T15-0110, the hearing officer considers owner's rent increase notice valid even though a decision for the owner's petition for a rent increase is not final

6. There is only one optional owner petition L15-0007 filed regarding to this rent increase, not multiple petitions as the hearing officer claims, thus the legal doctrine res judicata does not applied

Sincerely,

Ming Wong

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 NUMBERS:	L15-0024, Wong v. Tenants; T15-0068, Desta v. Wong; & T15-0069, Mengistu v. Wong
PROPERTY ADDRESSES:	80 Fairmount Ave., Oakland, CA
DATES OF HEARING:	August 26, October 2, & October 30, 2015
DATE OF DECISION:	December 2, 2015
APPEARANCES:	Ming G. Wong (Owner) Tigist Testa (Tenant, Unit #80) Frehewit Mengistu (Tenant, Unit #84) Kebreab Gebrezadik (Tenant, Unit #82)[1] Dibwork Haile (Interpreter for Tenants)

SUMMARY OF DECISION

The owner's petition is denied. The petition of tenant Testa is partly granted. The petition of tenant Mengistu is granted.

CONTENTIONS OF THE PARTIES

On January 29, 2015, tenant Desta filed a petition which alleges that a current proposed rent increase from $830 to $910.56 per month, effective March 1, 2015, as well as prior rent increases, exceed the CPI Adjustment and are unjustified or is greater than 10%; that she did not receive the form Notice to Tenants (RAP Notice) together with any of the contested rent increases; and that her housing services have been decreased due to rats in her rental unit.

[1] Present only at the Hearing on August 26, 2015.

The owner filed a response to Ms. Desta's petition, which alleges that the contested rent increases are justified by increased housing service costs; that the tenant was given the RAP Notice on together with all rent increases; and denies that the tenant's housing services have decreased.

On January 29, 2015, tenant Mengistu filed a petition which alleges that a current proposed rent increase from $830 to $910.56 per month, effective March 1, 2015, as well as prior rent increases, exceed the CPI Adjustment and are unjustified or is greater than 10%, and that she first received the RAP Notice on January 25, 2015.

The owner filed a response to Ms. Mengistu's petition, which alleges that the contested rent increases are justified by Banking, increased housing service costs, and capital improvement costs, and that the tenant was given the RAP Notice on together with all rent increases.

On March 18, 2015, the owner filed a petition for a Certificate of Exemption on the ground that the subject building has been "substantially rehabilitated."

THE ISSUES

(1) How does a prior Hearing Decision between the parties, which denied the owner's petition for a rent increase based upon increased housing service costs, affect the owner's current petition, which claims that rent increases are justified by increased housing service costs?
(2) Has the subject building has been "substantially rehabilitated"?
(3) Are rent increase notices that are issued before there is a decision on an owner's petition seeking approval for a rent increase valid?
(4) When, if ever, did tenant Desta receive the RAP Notice?
(5) Have tenant Desta's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

EVIDENCE

The Owner's Petition – Increased Housing Service Costs: Official Notice is taken of the file in Case No. L15-0007, Wong v. Tenants, which involves the same parties as in the present case. In that prior case, the owner filed his petition on January 16, 2015, seeking approval of rent increases based upon increased housing service costs. A Hearing Decision in this prior case was issued on June 24, 2015, denying the owner's petition. On July 8, 2015, the owner filed an appeal of that Decision. The appeal is pending at this time.

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Substantial Rehabilitation:

Square Footage: The owner submitted a document entitled "Property Detail" published by Placer Title Company regarding the subject building, which states that the square footage is 3,374 square feet.[2]

Expenses: The owner submitted into evidence the following City of Oakland documents regarding the subject building:

A Building Permit Application dated July 13, 1983, which states that the value of the work was $45,000.[3]

A Mechanical Permit Application dated November 15, 1983, which does not state any value.[4]

A Mechanical Permit Application dated July 1, 1984, which does not state any value.[5]

A Plumbing Permit Application dated August 30, 1983, which does not state any value.[6]

An Electrical Permit Application dated September 13, 1983, which does not state any value.[7]

A Plumbing Permit Application dated September 12, 1983, which does not state any value.[8]

An Application for Report of Residential Building Record, dated August 20, 1983, which states that a building permit to convert a structure on the property to 4 units was issued on September 7, 1983.[9]

A Building Certificate of Occupancy issued on April 27, 1984, which does not state any value.[10]

The Rent Increase Notices: In Case No. L15-0007, the owner filed his petition on January 16, 2015, seeking approval of rent increases based upon increased housing service costs. On January 25, 2015 – nine days after filing the prior petition – the owner served rent increase notices in the present case.

RAP Notice – Tenant Desta: At the Hearing, the tenant was shown a copy of a RAP Notice that was issued by the Rent Adjustment Program on August 1, 2014.[11] She testified that she did receive a copy of this document together with the current contested rent increase. Official Notice

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[2] Exhibit No. 200. The tenants objected to the introduction of this document, and Exhibit Nos. 202 through 207 on the ground that they are "not clear." The objections were overruled, and these documents were admitted into evidence.

[3] Exhibit No. 202A. This Exhibit, and all others to which reference is made in this Decision, were admitted into evidence without objection, unless otherwise noted.

[4] Exhibit No. 203A

[5] Exhibit No. 203B

[6] Exhibit No. 204B

[7] Exhibit No. 205A

[8] Exhibit No. 206B

[9] Exhibit No. 207A

[10] Exhibit No. 207B

[11] Exhibit No. 211

is taken of the Hearing Decision in Case No. T14-0079, Desta v. Wong, in which it was found that the tenant received the RAP Notice in the year 2013.

Rent History – Tenant Desta: At the Hearing, the parties agreed that the tenant paid rent of $910.56 in the months of March and April 2015, and has paid rent of $721.67 each month from May through October 2015. It is assumed that the tenant paid $721.67 in November 2015.

Rent History – Tenant Mengistu: The parties further agreed that the tenant has paid $910.56 every month since January 2015. It is assumed that the tenant paid $910.56 in November 2015.

Decreased Housing Services, Tenant Desta: In her response to a Deficiency Notice sent to the tenant by this agency, the tenant alleged that her housing services have been decreased due to the presence of rats in her unit. At the Hearing, the tenant testified that this first became a problem in January 2015, and she notified the owner the same month by telephone and text message.

The tenant submitted a copy of a letter from herself and her husband to the owner, dated March 9, 2015, which states, in part: "It has been a long time since we let you know that we have rats problem."[12] She also submitted a number of photographs taken in her kitchen, with the date April 1 written on the backs, that she testified she took on that date.[13] These photographs appear to depict a great amount of rodent droppings. The tenant testified that this was no longer a problem by the end of June 2015. The owner testified that he hired an extermination company in December 2014, and the company has returned periodically to service Ms. Desta's unit.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Increased Housing Service Costs: An owner may not file multiple petitions on the same issue that has been decided against him or her, presumably hoping for a more favorable decision from a different Hearing Officer. The applicable legal doctrine is *res judicata*. The principle in non-legal terms is "you can only have one bite at an apple." The owner's petition is denied.

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 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.[14]

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[12] Exhibit No. 212

[13] Exhibit Nos. 213A through 213C. The owner objected to the admission of these photographs into evidence because they are "not credible." The objection was overruled, and the photographs were admitted into evidence.

[14] O.M.C. Section 8.22.030(B)(2)

The applicable rules of evidence in an administrative hearing are stated in Government Code Section 11513:[15]

> Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs . . .

The owner did not submit a single invoice or proof of payment for any construction expense. Rather, he submitted building permits and applications, one of which states the owner's estimate of the cost of the work. This documentation falls far short of the required standard for credible evidence, and it is found that the building is not exempt from the Rent Adjustment Ordinance.

The Rent Increase Notices: Section 8.22.70(D)(6) of the Rent Adjustment Ordinance states: "A rent increase following an owner's petition is operative on the date the decision is final and following a valid rent increase notice based on the final decision." The decision in Case No. L15-0007, Wong v. Tenants, is not yet final. In fact, the owner sent the current contested rent increase notices to the tenants months before there was even a Hearing on his prior petition.

When an owner files a landlord petition for approval of a rent increase, he or she cannot increase the rent prior to receiving a Decision from the Rent Adjustment Program. Therefore, none of the rent increase notices served by the owner are of any legal effect.

RAP Notices: In a prior case, it was determined that Ms. Desta received this Notice in 2013. The earlier version of the RAP Notice submitted by the owner in Ms. Mengistu's file is persuasive. It is found that both tenants received the RAP Notices in years before 2015. A tenant petition must be filed within 60 days of the date of service of a rent increase notice or the date the tenant first receives the RAP Notice, whichever is later.[16] Therefore, both tenant petitions were filed far too late to contest rent increases in prior years.

Decreased Housing Services, Tenant Desta: Under the Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent[17] and may be corrected by a rent adjustment.[18] However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy or a violation of the housing or building code which seriously affects the habitability of the tenant's unit.

Although the owner may have hired an exterminator, the photographs submitted by the tenant are both graphic and believable. This rat infestation reduced the package of housing services by 10% from January 1 through June 29, 2015, when the rats were no longer a problem.
As shown on the Table below, because of decreased housing services the tenant overpaid rent.

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[15] Regulations, Section 8.22.110(E)(4)
[16] O.M.C. Section 8.22.090 (A)(2)
[17] O.M.C. Section 8.22.070(F)
[18] O.M.C. Section 8.22.110(E)

Rent Underpayment s – Tenant Desta: The rent for the tenant's unit is $830 per month. As set forth on the Table below, although the underpaid rent, she is also entitled to a rent credit for decreased housing services. The tenant underpaid rent in the total amount of $96. The underpayment is ordered repaid over a period of 3 months.[19] The rent is temporarily increased by $32 per month, to $862 per month, beginning with the rent payment in December 2015 and ending with the rent payment in February 2016.

VALUE OF LOST SERVICES

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Rat Infestation	1-Jan-15	29-Jun-15	$830	10%	$ 83.00	6	$ 498.00
					TOTAL LOST SERVICES		$ 498.00

UNDERPAID RENT

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Mar-15	30-Apr-15	$911	$830	$ 81.00	2	$ 162.00
1-May-15	30-Nov-15	$ 722.00	$ 830.00	$ (108.00)	7	$ (756.00)
				TOTAL UNDERPAID RENT		$ (594.00)

RESTITUTION

MONTHLY RENT			$830
TOTAL TO BE REPAID TO OWNER			$ (96.00)
TOTAL AS PERCENT OF MONTHLY RENT			12%
AMORTIZED OVER	3	MO. BY REG. IS	$ (32.00)

Rent Overpayment s – Tenant Mengistu: The rent for the tenant's unit is $830 per month. As set forth on the following Table, because the contested current rent increase is invalid, the tenant overpaid rent in the amount of $729. The overpayment is ordered repaid over a period of 12 months.[20] The rent is temporarily reduced by $60.75 per month, to $769.25 per month, beginning with the rent payment in December 2015 and ending with the rent payment in November 2016.

OVERPAID RENT

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Mar-15	30-Nov-15	$911	$830	$ 81.00	9	$ 729.00
				TOTAL OVERPAID RENT		$ 729.00

RESTITUTION

MONTHLY RENT			$830
TOTAL TO BE REPAID TO TENANT			$ 729.00
TOTAL AS PERCENT OF MONTHLY RENT			88%
AMORTIZED OVER	12	MO. BY REG. IS	$ 60.75

[19] Regulations, Section 8.22.110(F)
[20] Regulations, Section 8.22.110(F)

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ORDER

1. Petition L15-0024 is denied. The subject building is not exempt from the Rent Adjustment Ordinance.

2. Petition T15-0068 (Desta) is partly granted.

3. Tenant Desta's rent, before a temporary increase, is $830 per month.

4. Tenant Desta has underpaid in the amount of $96. The underpayment is ordered repaid over a period of 3 months.

5. Tenant Desta's rent is temporarily increased by $32 per month, to $862 per month, beginning with the rent payment in December 2015 and ending with the rent payment in February 2016.

6. In March 2016, tenant Desta's rent will return to $830 per month.

7. Petition T15-0069 (Mengistu) is granted.

8. Tenant Mengistu's rent, before a temporary decrease, is $830 per month.

9. Tenant Mengistu has overpaid rent in the amount of $729. The overpayment is ordered repaid over a period of 12 months.

10. Tenant Mengistu's rent is temporarily reduced by $60.75 per month, to $769.25 per month, beginning with the rent payment in December 2015 and ending with the rent payment in November 2016.

11. 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: December 7, 2015

Stephen Kasdin
Hearing Officer
Rent Adjustment Program

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PROOF OF SERVICE

Case Numbers: L15-0024 (Wong v. Tenants); T15-0068 (Desta v. Wong) & T15-0069 (Mengistu v. Wong)

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:

Ming Wong
P. O. Box 51346
San Jose, CA 95151

Caroline McCormack
Nils Stannik
86 Fairmount Ave.
Oakland, CA 94611

Eric Strelneck
88 Fairmount Ave.
Oakland, CA 94611

Frehewit Mengistu
Getnet Mamo Abdi
84 Fairmount Ave.
Oakland, CA 94611

Kibreab Gebrzadik
82 Fairmount Ave.
Oakland, CA 94611

Solomon Tefera
Tigist Tefera
80 Fairmount Ave.
Oakland, CA 94611

Dirbwork Haile
200 Fairmount Ave., #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 December 2, 2015, in Oakland, California.

Stephen Kasdin
Oakland Rent Adjustment Program

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CHRONOLOGICAL CASE REPORT

Case No.:	T15-0372
Case Name:	Gebrezadik v. Wong
Property Address:	82 Fairmont Avenue, Oakland, CA
Parties:	Kibreab T. Gebrezadik (Tenant) Ming Wong (Landlord)

TENANT APPEAL:

Activity	Date
Tenant Petition filed	July 28, 2015
Landlord Response filed	August 26, 2015
Hearing Decision issued	January 11, 2016
Tenant Appeal filed	January 21, 2016

City of Oakland
Residential Rent Adjustment Program
250 Frank Ogawa Plaza, Suite 5313
Oakland, California 94612
(510) 238-3721

2015 JAN 21 PM 3:09

APPEAL

Appellant's Name
Kibreab T- Gebrezadik

Landlord ☐ Tenant ☑

Property Address (Include Unit Number)
82 Fairmount Ave
Oakland, CA 94611

Appellant's Mailing Address (For receipt of notices)
82 Fairmount Ave
Oakland, CA 94611

Case Number T15-0372

Date of Decision appealed 1/7/16

Name of Representative (if any)

Representative's Mailing Address (For notices)

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.*

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

8. You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed. I declare under penalty of perjury under the laws of the State of California that on 01/21, 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:

Name	Ming Wong
Address	P.O.Box 51346
City, State Zip	San Jose, CA 95151
Name	
Address	
City, State Zip	

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE 01/21/16

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.

CITY OF OAKLAND

2016 JAN 21 PM 3:09

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

HEARING DECISION

CASE NUMBER: L15-0007, Wong v. Tenants
PROPERTY ADDRESS: 80 Fairmount Avenue, Oakland
82 Fairmount Avenue, Oakland
84 Fairmount Avenue, Oakland

DATE OF HEARING: May 27, 2015
DATE OF DECISION: June 24, 2015

Tigist Destat	Tenant
Kibreab Gebrezadik	Tenant
Frehewit Mengistu	Tenant
Ming Wong	Owner

SUMMARY OF DECISION

The owner's petition is DENIED.

CONTENTIONS OF THE PARTIES

The owner requests a rent increase on the basis of increased housing costs. The tenants contest the owner's documentation of costs and object to the rent increase on the basis of increased housing costs.

ISSUE PRESENTED

Is the owner entitled to raise the tenant's rents on the basis of increased housing service costs?

EVIDENCE

Increased Housing Service Costs: Ming Wong, the owner, testified that the 2013 rents totaled $65,280 and the 2014 rents totaled $67,080. The owner claimed an increase of $6,510.91 in housing costs from 2013 to 2014, and submitted invoices and checks for both years to support his claim. The owner's summary contains an expense of $5,496 for the business license in 2014. However, no amount is stated for 2013 and this figure accounts for the majority of the increase. The owner provided documentation of payment totaling $4,371.69 from the City of Oakland Business Tax Section for 2014. The owner testified that he did not receive a bill for the business tax in 2013. However,

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

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: **T15-0372, Gebrezadik v. Wong**

PROPERTY ADDRESS: **82 Fairmount Ave, Oakland, CA**

DATE OF HEARING: **November 24, 2015**

DATE OF DECISION: **January 7, 2016**

APPEARANCES: **Kibreab Gebrezadik (Tenant)**
Ming Wong (Owner)

SUMMARY OF DECISION

The tenant petition is granted in part and denied in part.

CONTENTIONS OF THE PARTIES

Tenant Kibreab Gebrezadik filed a petition on July 28, 2015, which alleges that a current proposed rent increase from $910.56 to $913.00 a month exceeds the CPI Rent Adjustment and is unjustified. He also contests prior rent increases effective March 2015, March 2014 and March 2013. Additionally, he alleges that the contested rent increase is the second rent increase in a 12 month period; that he was not provided with an *Enhanced Notice of Capital Improvement Costs*, and that the proposed increase would exceed an overall increase of 30% in 5 years.

The owner filed a response to the petition, which alleges that the unit is exempt from Rent Adjustment because it was substantially rehabilitated. Additionally, the owner claimed that the rent increase was justified by banking and increased housing service costs.

///

THE ISSUES

(1) When was the tenant first served with the form Notice to Tenants (*RAP Notice*)?
(2) What rent increases can be contested by the tenant?
(3) Is the rent increase served on July 27, 2015, valid?
(4) Was the rent increased more than 30% since August 2014?
(5) Has the owner provided any evidence to establish that the unit has been substantially rehabilitated?
(6) What is the allowable rent?
(7) Is restitution owed to the owner or the tenant? If so, how does it impact the rent?

EVIDENCE

History: The tenant testified that he moved into the subject unit in August of 2008 at an initial rent of $700 a month. He first got the *RAP Notice* in January of 2015.

The owner testified that he had given the *RAP Notice* earlier than January of 2015, but did not testify as to when it was provided. The owner stated on his owner petition that the *RAP Notice* was given to the tenant in August of 2008.

The Hearing Officer takes *Official Notice* of Rent Adjustment Program cases L15-0007 and T15-0110, which involve the same parties and the same property. A review of the case files establishes the following: On January 16, 2015, Ming Wong filed an *Owner Petition for Approval of a Rent Increase* in case L15-0007. In that case he sought a rent increase for the 5 units located in the building at 80-84 Fairmount Avenue based on *Increased Housing Service Costs*. A Hearing was held in that case on May 27, 2015. On June 24, 2015, a *Hearing Decision* was issued in that case and the owner's petition was denied. The owner has appealed that decision and the appeal is pending.

While the owner petition in L15-0007 was pending, Ming Wong issued a rent increase to Gebrezadik sometime in January 2015, purporting to increase his rent from $830 to $910.56, effective March 1, 2015. Wong testified that the rent increase was based on the same basis as the rent increase he was seeking in case L15-0007. In response to that rent increase, Gebrezadik filed a *Tenant Petition* in case T15-0110. That case was originally held on July 13, 2015, and because the owner did not appear, a *Hearing Decision* was issued in which the rent increase was denied.

The owner appealed the original *Hearing Decision* in T15-0110 and claimed he had not been given adequate notice of the Hearing date. An *Order* was issued by the RAP on August 1, 2015, in which the case was reopened to determine if there was good cause for the owner's non-appearance. The *Order* specified:

> "**GOOD CAUSE APPEARING, IT IS HEREBY ORDERED** that a new Hearing is scheduled to determine whether the reason for the owner's absence constitutes good cause, and if so, the Hearing Decision shall be set aside and the

Hearing shall be reopened for a hearing on the issue of whether the rent increase is justified."

The Hearing was scheduled for September 30, 2015.

On September 30, 2015, the tenant did not appear at the Hearing. Because the tenant did not appear a *Dismissal* was issued. No appeal was filed by either party after the dismissal was filed.

The tenant testified at the Hearing in the present case that he did not appear at the Hearing on September 30, 2015, because he had received the decision in case L15-0007, denying the owner's rent increase request. Because that request was denied, he believed that the rent increase that was issued by the owner in January of 2015, was invalid and that he did not have to appear at the Hearing on September 30, 2015. He testified that "I would not petition against a rent increase that had already been denied."[1]

The owner testified that on July 27, 2015, he sent a rent increase to the tenant by certified mail increasing his rent to $913.00 effective August 27, 2015. The owner had sent a letter to the RAP office on November 16, 2015, saying that he wanted to rescind the August 27, 2015, rent increase. However at the Hearing, he chose not to rescind the rent increase.

At the Hearing the owner sought to have the documents from a previous case considered in this case. The owner had not filed any documents to justify the rent increase in the subject case.

The tenant and the owner testified that from March 2015-August 2015 the tenant paid rent of $910.56. Beginning September 1, 2015, he has been paying rent in the amount of $913.00.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The RAP Notice:

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy[2] and together with any notice of rent increase or change in the terms of a tenancy.[3] An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until 6 months after the first *RAP Notice* is given.[4]

While the owner and the tenant are in dispute as to when the tenant was first served with the *RAP Notice,* the tenant testified that he received a *RAP Notice* in January of 2015 with the rent increase he was given that month. While he did not testify as to a specific date, his tenant petition states that he was served with the *RAP Notice* on

[1] Tape Recording 8:40-8:46
[2] O.M.C. § 8.22.060(A)
[3] O.M.C. § 8.22.070(H)(1)(A)
[4] O.M.C.§ 8.22.060 (C)

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January 30, 2015. The owner did not testify as to when the tenant was first served with the *RAP Notice*, although he did say on his *Owner Response* that it was served in August of 2008. Nonetheless, the owner produced no evidence to establish when the *RAP Notice* was served.

Since the owner has the burden of proof to establish when the *RAP Notice* was served, and since he produced no documentary evidence in this case at all, the tenant's testimony that he first received the *RAP Notice* in January of 2015 is credited.

What Rent Increases Can Be Contested by the Tenant?

The tenant sought to contest rent increases noticed in July 2015, January 2015, January 2014 and July 2013. A tenant petition must be filed within 60 days of the date of service of a rent increase notice or notice changing the terms of tenancy or the date the tenant first receives written notice of the existence and scope of the RAP, whichever is later.[5] Since the tenant received the RAP Notice on January 30, 2015, had he wanted to petition to contest prior rent increases, he would have had to file a petition by March 31, 2015. This petition was filed on July 28, 2015. Therefore, as to all rent increases served earlier than the July 2015 rent increase, the tenant petition is untimely.

The tenant's petition as to the rent increases served in January 2015 (from $830-910.56), January 2014 (from $780-$830), and July 2013 (from $700-$780) is denied as untimely.

An additional reason to deny the tenant's petition with respect to the rent increase served in January 2015, is that that rent increase was the subject of the petition previously filed by the tenant on February 10, 2015 (T15-0110). That case was dismissed by the Hearing Officer when the tenant did not appear for a Hearing scheduled on September 30, 2015. While the tenant believed that the rent increase was invalid because the owner's petition in case L15-0007, had been denied, if the tenant felt that the dismissal in T15-0110 was wrong, his remedy was to appeal that case. No appeal was filed. The tenant cannot relitigate that rent increase now.

The tenant can contest the rent increase served on July, 27, 2015.

Is the Rent Increase Served on July 27, 2015, Valid?

On July 27, 2015, the owner served a rent increase by mail purporting to increase the tenant's rent to $913.00, effective August 27, 2015. Since the owner had increased the tenant's rent effective March 2015 to $910.56, this rent increase was the second rent increase in 12 months. The RAP Ordinance specifically states that "*an owner may increase the rent on a covered unit....only once in a twelve month period.*[6]" Therefore the July 27, 2015, rent increase was the second increase in a year and is invalid.

---

[5] O.M.C. Section 8.22.090 (A)(2); Appeal Decision in Case No. T09-0086, Lindsey v. Grimsley, et al

[6] O.M.C. § 8.22.070 A

Another reason the rent increase was invalid is that it was improperly served. Rent increase notices must be given in writing at least 30 days before the rent increase is to go into effect if it is served by hand. Civil Code § 827(b)(1). However, when a rent increase notice is served by mail, the rent increase cannot go into effect until 35 days after the notice is mailed. Code of Civil Procedure § 1013.

CCP § 1013 specifies that "service is complete at the time of deposit, but any period of notice.....which time period or date is prescribed by statute...shall be extended five calendar days."

Here the rent increase notice was served by certified mail on July 27, 2015. Thirty-five days after July 27, 2015 is September 1, 2015. The owner testified that the rent increase notice specified that it was to go into effect on August 27, 2015. This is not 30 days' notice. Therefore, this notice is void.

Since the rent increase notice served in July 2015 is invalid, there is no reason to discuss the owner's justifications (banking and increased housing service costs.)

Did the Rent Increase Cause the Rent to be Increased More than 30% since August 1, 2014?

In April of 2014, the Oakland City Council amended the Rent Adjustment Ordinance as follows:

> "No series of rent increases in any five-year period can exceed 30 percent for any rent increases based on the CPI Rent Adjustment .....and any justifications pursuant to O.M.C. 8.22.070 (C)(2)..."[7]

The effective date of this amendment was August 1, 2014. Therefore, until July 31, 2019, no combined rent increases issued after August 1, 2014, can exceed 30% of the rent that was in effect on August 1, 2014.

According to the tenant's petition and the owner response, the tenant was paying rent of $830.00 a month in August of 2014. Since September of 2015 he has been paying rent $913.00. The rent has only increased by 10%. Therefore, the owner has not increased the rent more than 30% since August 1, 2014. This claim is denied.

Has the Owner Produced Documents in Support of His Claim of Exemption?

In the owner's response he claims that the unit is exempt from the Rent Adjustment Program because it has been substantially rehabilitated. However, the owner did not produce any documents in this case to support this claim. Therefore this claim is denied.

[7] O.M.C. § 8.22.070 (A)(3)

What is the Allowable Rent?

Since the tenant cannot contest the rent increase effective March 1, 2015, which increased the rent to $910.56, the current legal rent remains $910.56.

What Restitution is Owed and How Does it Impact the Rent?

The tenant has been paying rent in the amount of $913 since September 2015. He has overpaid rent by $2.44 a month for a period of 5 months, for a total overpayment of $12.20. The tenant is owed $12.20. Rent overpayments are usually paid out over time, but where the amount is so small, the rent repayment can be paid in one month. The rent for the month of February 2016 is therefore $898.36. The rent reverts to the current legal rent of $910.56 in March 2016.

ORDER

1. Petition T15-0372 is granted in part and denied in part.

2. The tenant's petition as to all rent increases prior to the rent increase served in July of 2015 is untimely and is denied.

3. The rent increase notice served in July 2015 is invalid.

4. The tenant's rent is $910.56 a month.

5. The tenant has overpaid rent in the amount of $12.20. The tenant's rent in February 2016 is $898.36. The rent reverts to $910.56 in March 2016.

6. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) 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: January 7, 2016

Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T15-0372

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:

Tenant
Kibreab T. Gebrezadik
82 Fairmount Ave
Oakland, CA 94611

Owner
Ming Wong
P.O. Box 51346
San Jose, CA 95151

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 January 11, 2016 in Oakland, CA.

Barbara M. Cohen

CHRONOLOGICAL CASE REPORT

Case No.:	T16-0141
Case Name:	Mengistu v. Wong
Property Address:	84 Fairmont Ave., Oakland, CA
Parties:	Frehewit Mengistu (Tenant) Ming Wong (Property Owner)

LANDLORD APPEAL:

Activity	Date
Tenant Petition filed	March 11, 2016
Landlord Response filed	April 8, 2016
Hearing Decision issued	September 14, 2016
Landlord Appeal filed	September 29, 2016

RECEIVED

SEP 29 2016

RENT ADJUSTMENT PROGRAM
OAKLAND

City of Oakland
Residential Rent Adjustment Program
250 Frank Ogawa Plaza, Suite 5313
Oakland, California 94612
(510) 238-3721

APPEAL

Appellant's Name
MING WONG

Landlord ✓ Tenant

Property Address (Include Unit Number)
84 FAIRMOUNT AVE
OAKLAND, CA. 94611

Appellant's Mailing Address (For receipt of notices)
PO BOX 51346
SAN JOSE, CA. 95151

Case Number T16-0141

Date of Decision appealed

Name of Representative (if any)

Representative's Mailing Address (For notices)

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

1. ☑ **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** *You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.*

2. ☐ **The decision is inconsistent with decisions issued by other hearing officers.** *You must identify the prior inconsistent decision and explain how the decision is inconsistent.*

3. ☑ **The decision raises a new policy issue that has not been decided by the Board.** *You must provide a detailed statement of the issue and why the issue should be decided in your favor.*

4. ☑ **The decision is not supported by substantial evidence.** *You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.*

5. ☐ **I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.** *You must explain how you were denied a sufficient opportunity and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.*

6. ☐ **The decision denies me a fair return on my investment.** *You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.*

7. ☐ Other. *You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached* 2 *. 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 9/26, 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:

Name	FREHEWIT MENGISTU
Address	84 FAIRMOUNT AVE.
City, State Zip	OAKLAND, CA. 94611
Name	
Address	
City, State Zip	

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	**DATE** 9/24/2016

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.

September 24, 2016

City of Oakland
250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor
Oakland, CA. 94612

Re: appeal to T16-0141 hearing decision

Rent Board Committee of City of Oakland,

I am appealing the hearing decision on the following grounds:

1. As stated in the appeal hearing notice for case T15-0069 from the RAP board, the hearing decision is suspended pending on appeal decision

2. Since the hearing decision for case T15-0069 is suspended, the base rent before the current rent increase in question, that the tenant has been paying is $910.56/month, not $830/month

3. The allowable banking increase shall be calculated based on the base rent of $910.56/month, not $830/month

4. The overpayment or underpayment calculation shall be calculated based on the current base rent of $910.56/month, not $830/month

Please find enclosed a copy of the appeal hearing notice for case T15-0069.

Please make appropriate correction on the allowable banking rent increase and recalculate overpayment/underpayment amount accordingly.

Sincerely,

Ming Wong

CITY OF OAKLAND

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

Department of Housing & Community Development
Rent Adjustment Program

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

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

Case No(s): T15-0068 & T15-0069

Case Title: Desta v. Wong & Mengistu v. Wong

Property Address: 80 & 86 Fairmont Avenue, Oakland, CA

THE HEARING ON THIS APPEAL WILL BE HELD:

Date: September 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

The Staff decision (Administrative or Hearing Decision) is suspended until a final decision is issued by the Board. The decision of the Board is the final decision in the administrative process of the City of Oakland. There is no appeal of the Board to the City Council.

A request for a change in the date or time of the appeal hearing must be made in writing. A form for requesting a postponement is available from the Rent Adjustment Program. A continuance will be granted only for good cause. See Regulation 8.22.120.C. A second request for continuance will be granted only under exceptional circumstances.

Board meetings, including appeal hearings, are public. The Rent Adjustment Program makes an audio recording of the Board meetings. Any party may also bring a court reporter to record the proceedings at their own expense. By regulation, each party will have **15 minutes to present argument** in favor of, or in opposition to, the appeal. This time includes opening argument and any response. However, the Board may increase or reduce the time. Any party may be assisted by an attorney or any other person designated by the party.

Accessibility. The meeting is held in a wheelchair accessible facility. Contact the office of the City Clerk, City Hall, One Frank Ogawa Plaza, or call (510) 238-3611 (voice) or (510) 839-6451 (TTY) to arrange for the following services: 1) Sign interpreters; 2)Phone ear hearing device for the hearing impaired; 3) Large print, Braille, or cassette tape text for the visually impaired. The City of Oakland complies with applicable City, State and Federal disability related laws and regulations protecting the civil rights of persons with environmental illness/multiple chemical sensitivities (EI/MCS). Auxiliary aids and services and alternative formats are available by calling (510) 238-3716 at least 72 hours prior to this event. **Interpreters** for Cantonese, Mandarin, and Spanish speakers are available by prior arrangement with the Rent Adjustment Program (510) 238-3721.

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

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: **T16-0141, Mengistu v. Wong**

PROPERTY ADDRESS: **84 Fairmount Ave, Oakland, CA**

DATE OF HEARING: **June 30, 2016, September 12, 2016**

DATE OF DECISION: **September 14, 2016**

APPEARANCES: **Frehewit Mengistu (Tenant)**
Tigist Desta (Witness for Tenant)
Ming Wong (Owner)

SUMMARY OF DECISION

The tenant 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 which alleges that a rent increase from $910.56 to $958.56 a month, effective March 11, 2016, exceeds the CPI Adjustment and is unjustified or is greater than 10% and that no written notice of the Rent Program (*RAP Notice)* was given to her together with the notice of increase she is contesting. The tenant also contested 3 prior rent increases given in 2013, 2014 and 2015.

The owner filed a timely response to the tenant petition in which he claimed that the 2016 rent increase was justified by banking and increased housing service costs. The owner claimed that the prior rent increases were justified by increased housing service costs.

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THE ISSUES

1. What is the tenant's base rent prior to the subject rent increase?
2. In an Increased Housing Service cost case, can the income received from an exempt unit be included in the income analysis?
3. In this case is the Hearing Officer bound by the facts determined in case L15-0007?
4. Is the Owner entitled to a rent increase based on Increased Housing Service Costs?
5. Is the Owner entitled to a rent increase based on Banking?
6. Is the tenant entitled to restitution of overpaid rent, and if yes, how does that impact the rent?

EVIDENCE

History: The tenant, Frehewit Mengistu, testified that she moved into the subject unit in November of 2009 at an initial rent of $700 per month.

The Hearing Officer takes *Official Notice* of Rent Adjustment Program (RAP) cases L14-0024, T14-0500, L15-0007, T15-0069 and L15-0024, which involve the same parties and the same property.

A review of the case files establishes the following: In L14-0024, the owner filed a *Petition for Certificate of Exemption* in which he claimed that the unit was entitled to an exemption from the RAP because it had been substantially rehabilitated. This claim was denied.

In case T14-0500, the tenant filed a petition contesting two rent increases given in 2013 and 2014, raising the rent to $780 and $830 a month, respectively. Her petition was denied as untimely. In that case it was determined that the tenant had received the *RAP Notice* by April 28, 2014. No appeal was filed in that case.

On January 16, 2015, Ming Wong filed an *Owner Petition for Approval of a Rent Increase* in case L15-0007. In that case he sought a rent increase for the 5 units located in the building at 80-84 Fairmount Avenue based on *Increased Housing Service Costs*. A Hearing was held in that case on May 27, 2015. On June 24, 2015, a *Hearing Decision* was issued in that case and the owner's petition was denied. That decision was upheld on appeal by the *HRRRB* on March 24, 2016, and an *Appeal Decision* was issued on May 3, 2016. In that case the owner sought an $80.56 rent increase as to this tenant.[1] In that case, the Hearing Officer found that the owner had the following income and expenses:

Rents	$67,080
Business License Tax	$ 935.77
Garage	$ 350
Electricity/Gas (PGE)	$ 106.23

[1] See IHSC spreadsheet filed with Owner Petition in *Gebrezadik v. Wong, T16-0043.*

Ins.	$ 1,181
Refuse removal	$ 2,353
Property Taxes	$10,573
Water/Sewer	$ 1,946
8% of gross op. income (rather than repair/maintenance exp)	$ 5,366.40

While the owner petition in L15-0007 was pending, Ming Wong issued a rent increase to Mengistu sometime in January 2015, purporting to increase her rent from $830 to $910.56, effective March 1, 2015. In response to that rent increase, Mengistu filed a *Tenant Petition* in case T15-0069. That case was combined with another *Owner Petition* filed by the owner, in case L15-0024, in which the owner again sought a *Certificate of Exemption* based on substantial rehabilitation. The Hearing Decision in L15-0024 and T15-0069, was issued on December 2, 2015. That decision denied the *Owner Petition* for exemption and granted the tenant petition, invalidating the rent increase. The decision invalidating the rent increase was based on the Hearing Decision in L15-0007. The *Hearing Decision* stated that:

"1. Petition L15-0024 is denied. The subject building is not exempt from the Rent Adjustment Ordinance. .....

7. Tenant Mengistu's rent, before a temporary decrease, is $830 per month.

8. Tenant Mengistu has overpaid rent in the amount of $729. The overpayment is ordered repaid over a period of 12 months.

9. Tenant Mengistu's rent is temporarily reduced by $60.75 per month, to $769.25 per month, beginning with the rent payment in December 2015 and ending with the rent payment in November 2016."

The owner appealed the *Hearing Decision* in T15-0069. That appeal is pending.

The Hearing Officer also takes *Official Notice* of case T16-0043, the case of *Gebrezadik v. Wong*, involving a different tenant in the same building. The owner in the instant case referred to documents filed in that case, and requested that the file in this case incorporate those documents.

Rent Payments: In the instant case, the tenant testified that she received a rent increase notice by mail purporting to increase her rent to $958.56 effective March 1, 2016. The tenant could not remember when she received the rent increase notice. The owner testified that the rent increase notice was served on January 21, 2016, by mail. Both parties agree that the rent increase notice was served with the *RAP Notice*. The parties further agree that since March of 2016, the tenant has paid monthly rent of $958.56.

The tenant also testified that she never took the restitution she was awarded in case T15-0069. The owner agreed.

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Banking: The owner provided a banking calculator for this tenant.[2] According to the owner's petition, he increased the rent by $80 a month in March of 2013, based on *Increased Housing Service Costs*. The owner increased the rent by $50 a month in March of 2014, also based on *Increased Housing Service Costs*. As noted above, the 2015 rent increase was denied in cases L15-0007 and T15-0069.

Increased Housing Service Costs:

The testimony cited in this section comes from both the testimony in the instant case and the testimony in *Gebrezadik v. Wong*, T16-0043. Additionally, factual citations are made to the Hearing Decision in case L15-0007.

Income: The owner testified that the building in question is a 4-unit building with an independent structure in the back which was built from a garage in 1984. That unit was granted a *Certificate of Exemption* from the RAP on March 15, 2016, because it is new construction.[3]

2014: In case L15-0007, a factual determination was made that the owner's income in 2014 for rent was $67,080.

2015: The owner testified to the following income in 2015 (except for the amount stated under "Additional Rent Payment, see below)[4]:

	Unit 80 2015	Unit 82 2015	Unit 84 2015	Unit 86 2015	Unit 88 2015
Jan	$738.33	$830.00	$830.00	$1,900.00	$1,300.00
Feb	$738.33	$830.00	$830.00	$1,900.00	$1,300.00
Additional Rent Payment	$41.67				
March	$910.56	$910.56	$910.56	$1,900.00	$1,324.70
April	$910.56	$910.56	$910.56	$1,900.00	$1,324.70
May	$910.56	$910.56	$910.56	$1,900.00	$1,324.70
Jun	$721.67	$910.56	$910.56	$1,900.00	$1,324.70
Jul	$721.67	$910.56	$910.56	$1,900.00	$1,324.70
Aug	$721.67	$762.87	$910.56	$1,900.00	$1,324.70
Sep	$721.67	$913.00	$910.56	$1,900.00	$1,324.70
Oct	$721.67	$913.00	$910.56	$2,200.00	$1,324.70
Nov	$721.67	$913.00	$910.56	$2,200.00	$1,324.70
Dec	$721.67	$913.00	$910.56	$2,200.00	$1,324.70
Totals	$9,301.70	$10,627.67	$10,765.60	$23,700.00	$15,847.00

[2] Exhibit 2 (this case)
[3] Exhibit 13, T16-0043, page 1
[4] In case T16-0043, the owner testified that Exhibit 4 and Exhibit 5, which show his *Wells Fargo* bank statements and deposits received for rent, do not always exactly reflect the deposits for each unit. Sometimes he deposits more than one check at a time, and sometimes tenants pay multiple months at a time.

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With respect to the additional rent payment entry in the above chart of $41.67 for unit 80 in February of 2015, the owner also produced copies of checks paid to him by various tenants over these two years. For the year 2015, in unit 80, he has two checks from Desta/Sebsibe in unit 80 in February of 2015. One check is for $738.33. The second check is for $780.[5] Since the owner testified that he received only $738.33 from these tenants in both January and February of 2015, this appears to be a discrepancy.

Additionally, the owner testified that his only other income comes from the coin operated washer/dryer on the premises. He does not know the exact amount that he earns from these machines as he does not count the money when he retrieves it. A reasonable estimate is that he receives a total of $350 a year.

The owner's testimony as to rent payments received in Unit 84, relates to the subject unit.

The owner testified that with respect to unit 80, the reason the rent went down, is that the tenant was entitled to restitution based on a Hearing at the *RAP*. The base rent did not change.

On the owner's *Increased Housing Service Costs (IHSC)* spreadsheet, he claimed rents in 2014 totaling $51,113 and in 2015 totaling $54,680.[6]

Expenses: The owner testified to the following expenses on the property. This evidence comes from both the testimony in this case, and the testimony in case T16-0043, a case involving a different unit in the subject building. The Hearing in that case was held on May 17, 2016 and June 24, 2016. The rent increase in that case was based on the same *Increased Housing Service Cost* analysis that was considered in this case.

Business License Tax:

2014: In case L15-0007, it was determined that the owner's Business License Tax fees was $935.77. (It is assumed that this amount included RAP fees.)

For the 2015 tax year, the owner provided proof of expenditures $907.10 for business license tax and $150 in RAP fees.[7]

Electricity/Gas: The owner testified that the *PG&E* bills for this property are for the entire property, including the exempt unit.

2014: In case L15-0007, it was determined that the owner paid *PG&E* bills totaling $106.23.

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[5] T16-0043, Exhibit 4, page 20. Based on the owner's testimony that sometimes the tenants would pay multiple months at a time, it is likely that the tenants were paying for January and February of 2015

[6] The difference between the owner's figures and these figures are predominantly related to the fact that the owner did not include income from the exempt unit in his analysis.

[7] T16-0043, Exhibit 14, pp 3-4

2015: For the 2015 year, the owner produced records showing that he paid *PG&E* the total sum of $153.55.[8]

Insurance: The owner testified that the insurance costs for the property are separated based on the 4-unit building and the single exempt unit.

2014: In case L15-0007, it was determined that the owner paid insurance costs of $1,181 in 2014.

2015: For the 2015 year, the owner produced records showing that he paid *AAA* the sum of $1,114 for insurance.[9] This includes $745 for the four unit building and $369 for the separate unit.

Refuse Removal: The owner testified that the *Waste Management* costs are for the whole property, including the exempt unit.

2014: In case L15-0007, it was determined that the owner paid *Waste Management* the sum of $2,353.

2015: For the 2015 year, the owner produced records showing that he paid *Waste Management* the sum of $2,960.87 for refuse removal.[10]

Replacement: For the 2015 year, the owner claimed a "replacement" cost of $1,268.[11] He did not testify about what this cost represents. Nor did the Hearing Officer see a bill representing this figure in the documents provided by the owner.

Taxes: The tax bill received by the owner is for the entire property, including the unit which has been determined to be exempt as new construction.

2014: In case L15-0007, it was determined that the owner's property tax payments in 2014 was $10,573.

2015: For the 2015 tax year, the owner's tax bill from *Alameda County* was for $10,712.50.[12]

Water/Sewage: The owner testified that the water/sewage charges for this property apply to the property as a whole, not just the 4 unit building. This includes the costs expended to provide water and sewage service to the unit that has been declared exempt as new construction.

2014: In case L15-0007, it was determined that the owner's water/sewage charges were $1,945.70.

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[8] T16-0043, Exhibit 10
[9] T16-0043, Exhibit 16, 5-8
[10] T16-0043, Exhibit 9, page 7
[11] T16-0043, See Owner's Increased Housing Service Cost Spreadsheet, Ex 2, page 1
[12] T16-0043, Exhibit 15, page 1

2015: For the 2015 year, the owner provided documents showing he paid *EBMUD* a total of $2,301.05.[13]

Other: On the owner's *IHSC* spreadsheet, he claimed "mailing costs" of $346 in 2015, but no "mailing costs" in 2014. Mailing costs are discussed below under "legal fees."

Maintenance and Repair:

2014: In case L15-0007, the owner was granted 8% of gross operating expenses in 2014, rather than itemizing the maintenance, repair and legal costs. He was granted $5,366.40 in this category. (See discussion below.)

2015: The owner's *IHSC* spreadsheet in this case claims 2015 maintenance and repair expenses of $5,579.66. Attached as Exhibit A to this *Hearing Decision* is a spreadsheet which documents all the repair and maintenance bills and receipts provided by the owner for 2015 in this case. The total costs incurred were $5,603. Those costs included a charge of $100 for a Home Depot gift card on December 20, 2015. Excluding that cost, the expenditures total $5,503.

Legal Fees:

2014: Since Mr. Wong was granted the 8% of gross operating income in L15-0007, legal expenses were not separately considered.

2015: The owner provided proof of payment of legal expenses and mailing fees of $574.16 in the calendar year 2015 (See Exhibit B to this *Hearing Decision*). On his *IHSC* spreadsheet filed in this case he claimed mailing fees of $346 and legal fees of $203 for a total of $549. Of the costs expended by the owner for mailing fees in 2015, he attached proof of certified mail costs for mailings to Utah and Pennsylvania, in addition to mailing costs to California. The costs of mailings to Utah and Pennsylvania totaled $8.99. At the Hearing, the owner admitted that the certified mailing costs outside of California were not relevant to his expenses for this building.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

What is the tenant's base rent prior to the subject rent increase?

The last case between the parties was T15-0069. In that case it was determined that the tenant's base rent was $830 a month. There have been no intervening rent increases other than the subject rent increase. Therefore, before consideration of the restitution owed from T15-0069, and the current contested rent increase, the tenant's rent was $830 a month.

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[13] Id.

In an Increased Housing Service Costs Analysis, Is it Proper to Include Income from an Exempt Unit?

In this case the owner owns a single piece of property which has 5 rental units. Four of the units are in a single building. The fifth unit is a stand-alone unit that was converted into a unit in 1984, that previously was a garage.[14] In 2015, the stand-alone unit (88 Fairmount Avenue) was determined to be exempt from the RAP as new construction. *Wong v. Tenant, L15-0059.*

Even though this single unit is exempt from the RAP, it is still an integral part of the subject property. The owner pays *Waste Management* bills, *EBMUD* bills, property taxes and other expenses for the entire property. Based on the information provided by the owner, it is not possible to determine what costs are expended for that unit alone, since most all the billings are for the property as a whole.

In order to analyze whether or not the owner is allowed a rent increase based on increased housing service costs, it is required to look at all the income and expenses for the subject property and compare them from one year to the next. Since it is not possible to separate out the expenses for the single exempt unit, it is proper to include the income from the exempt unit in analyzing whether or not the owner has proven a valid *Increased Housing Service Costs* claim.

Therefore, in analyzing the income received by the owner in this claim, the income from the exempt unit is included.

In this case is the Hearing Officer bound by the facts determined in case L15-0007?

The owner contends that the RAP is bound by the factual determinations made in case L15-0007 in which the Hearing Officer denied the owner's previous request for a rent increase based on *Increased Housing Service Costs* and in which the Hearing Officer did not grant him certain expenses.

It is proper to follow the factual determinations made by a prior Hearing Officer when those factual determinations resulted in a decision that affected the parties. Therefore, in this case the factual determinations made by the Hearing Officer in L15-0007 will be followed.

Is the Owner Entitled to a Rent Increase Based On Increased Housing Service Costs?

A rent increase may be justified by increased housing service costs. These costs are services provided by an owner related to the use or occupancy of rental units. They include, but are not limited to, "insurance . . . lighting, heat, water . . . refuse removal . .

[14] See Hearing Decision in case L15-0059, Wong v. Tenant.

."[15] In determining whether there has been an increase in housing service costs, the annual operating expenses for the previous two years are compared.[16] In this case, the relevant years are 2014 and 2015. If costs have increased, the annual amount of increase is divided by the gross monthly operating income, and rents may be increased by the resulting percentage, providing it is not greater than 10%.[17]

The owner has established the following income and expenses in 2014 and 2015:

Income:

Income: The owner testified that the building in question is a 4-unit building with an additional unit in an independent structure in the back which was built from a garage in 1984. That unit was granted a *Certificate of Exemption* from the RAP on March 15, 2016, because it is new construction.[18]

In case L15-0007, it was determined that the owner's rental income from 2014 was $67,080. This factual determination is followed in this case.

The owner's 2015 income is based on the owner's testimony and records. His 2015 income is as follows:

Rent Received	2015
80	$9,301.70
82	$10,627.67
84	$10,765.60
86	$23,700.00
88 (back unit)	$15,847.00
Total Rent Received	**$70,241.97**

The owner's testimony was inaccurate as to the rent received for unit 80 in 2015. He testified that he only received $738.33 in January and February of 2015. The checks he provided from the tenants in that unit show two payments in February of 2015, one of $738.33 and one of $780. Since there was no payment at all for January of 2015 (and all other checks from these tenants were provided) and since the owner testified that sometimes the tenants paid for two months at once, in all likelihood these two checks were for January and February of 2015. Therefore, the owner underreported his income for unit 80 in 2015 and the correct amount is $9,301.70. That amount is reflected in the above chart.

As noted above, the owner did not include the rent he received for the back exempt property when he filled out his *Increased Housing Service Costs* spreadsheet. However,

[15] Regulations, Section 10.1
[16] Regulations, Section 10.1.
[17] Regulations, Section 10.1.1, O.M.C. § 8.22.070(A)(2)
[18] Exhibit 13, page 1

the income for that unit is properly included in this analysis. These figures are included on the attached *Increased Housing Service Costs* spreadsheet, attached to this *Hearing Decision* as Exhibit C. Use of this Table has been approved by the Board.[19]

The owner's testimony that his income for the laundry was approximately $350 a year in 2015 is credited. This income is added to the spreadsheet. This laundry income was not added to the spreadsheet in case L15-0007.[20] Therefore, it was not found to be part of the income for that year and is properly kept off the spreadsheet.

Expenses: The following expenses were determined by reviewing the evidence in this case and the evidence filed in cases L15-0007, T15-0110 and T16-0141, as well as the factual determinations made in L15-0007.

Business License Tax:

2014: The case L15-0007 determined that the owner's business license tax was $935.77, including *RAP* fees.

2015: The documentation establishes that the owner paid $907.10 for business license fees and $150 in *RAP* fees. The total for both charges equals $1,057.10.

These costs are entered into the spreadsheet.

Parking:

2014: The case L15-0007 determined that the owner had parking income of $350.

2015: There was no testimony as to any income for parking in 2015.

Electricity/Gas:

2014: The case L15-0007 determined that the owner paid $106.23 in *PG&E* costs in 2014.

2015: The *PG&E* costs for 2015 equal $153.55.

These costs are entered into the spreadsheet.

Insurance:

2014: The case L15-0007 determined that the owner's insurance costs in 2014 was $1,181.

2015: The insurance costs for 2015 equal $1,114.

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[19] T11-0113, *Poe v. Warren*

[20] It is possible that the Hearing Officer in the prior case added the laundry to the total "rents".

These costs are entered into the spreadsheet.

Refuse Removal:

2014: The case L15-0007 determined that the owner's *Waste Management* costs for 2014 equal $2,353.

2015: The *Waste Management* costs for 2015 equal $2,960.87.

These costs are entered into the spreadsheet.

Replacement: On the owner's *Increased Housing Costs* spreadsheet he claimed a "replacement" cost of $1,268. However, he did not testify about what this cost represents. Nor did the Hearing Officer see a bill representing this figure in the documents provided by the owner. This claim is denied.[21]

Taxes:

2014: The case L15-0007 determined that the owner's property tax costs for 2014 equal $10,573.

2015: The property tax costs for 2015 equal $10,712.50.

These costs are entered into the spreadsheet.

Water/Sewage:

2014: The case L15-0007 determined that the owner's *EBMUD* costs for 2014 equal $1,946.

2015: The *EBMUD* costs for 2015 equal $2,301.50.

These costs are entered into the spreadsheet.

Other: On the owner's *IHSC* spreadsheet, he claimed "mailing costs" of $346 in 2015, but no "mailing costs" in 2014. These costs are discussed in the "legal fees" section below.

Maintenance, Repair and Legal Expenses:

2014: In L15-0007, the Hearing Officer did not itemize the owner's claimed maintenance, repair and legal expenses, and instead used the 8% of gross operating income, for a total of $5,366.40.

[21] There are many costs associated with repairs and maintenance (see below) that might encompass this claimed $1,268.

2015: Exhibit "A" to this Hearing Decision documents the owner's maintenance and repair expenses of $5,603. Included in the owner's documentation was a charge for a $100 gift card from *Home Depot*. This cost was removed from the total and the allowable expenditures were $5,503.

Exhibit "B" to this Hearing Decision documents the owner's proof of payment of legal and mailing expenses of $574.16 in the calendar year 2015. These costs included mailing costs to Utah and Pennsylvania, which the owner properly acknowledged did not relate to his business expenses for this building. Therefore, those costs, of $8.99 must be subtracted from the total. The allowable costs in 2015 in this category is therefore $565.17.

These costs are entered into the spreadsheet.

The Spreadsheet: Attached as Exhibit "C" to this Hearing Decision is the *Increased Housing Service Costs* spreadsheet in this case. The spreadsheet shows that the owner had an increase in expenses in 2015, over the expenses from 2014. The amount of the difference was $1,556.29, which is an average monthly increase of $129.69.

After determining the monthly increase, it is imperative to determine how to spread that increase amongst all the rental units in the building. That amount is determined by analyzing the actual rent for each of the rental units, prior to the rent increase in question. In this case, the amounts entered for each rental unit was the rental amount for each unit, not including any temporary decrease for decreased services or rent overpayments made by the tenants. The rent for unit 80 was $910.56, the rent for unit 82 was $913, the rent for unit 86 was $2,200 and the rent for unit 88 was $1,324. (This is evidenced on the chart on page 4 of this Hearing Decision, where the amounts collected in each unit is listed.)

However, the rent for unit 84, the subject unit, on the chart on page 4, shows that the tenant had continued to pay the requested rental amount of $910.56, rather than the rent awarded in case T15-0069. In that case, the rent was determined to be $830 a month. Therefore, that is the amount that is listed in the IHSC Spreadsheet, attached as Exhibit C.[22]

According to the IHSC Spreadsheet, the owner is entitled to a rent increase for this unit in the amount of $17.42 a month.

Is the Owner Entitled to a Banked Rent Increase?

If an owner chooses to not increase the rent, or increase it less than the annual CPI adjustments permitted by the Ordinance, the owner is allowed to bank the unused

[22] It is important to note that the annual rent listed on page 2 of the IHSC spreadsheet does not equal the amount collected for rent in 2015. This is because the tenant in this case overpaid rent.

increases, subject to certain limitations. [23] However, the total rent increase imposed in any one rent increase may not exceed a total of three times the then allowable CPI increase and cannot be greater than 10%.[24] In no event may any banked CPI Rent Adjustments be implemented more than ten years after it accrues.[25]

Facts needed to calculate banked increases are: (1) The date of the start of tenancy or eleven years before the effective date of the increase at issue, whichever is later; (2) the lawful base rent in effect on said date; (3) The lawful rent in effect immediately before the effective date of the current proposed rent increase; and (4) the date(s) and amount(s) of any intervening changes to the base rent between dates (1) and (3). "D" is a banking calculator for Ms. Mengistu. It sets forth the base rent of $700, when the tenant moved into the building. According to the banking calculator, the owner is entitled to a banked increase of $42.33, effective March 1, 2016.

Whether or not the owner can take this banked rent increase, depends on whether doing so would cause the tenant's total rent increase to exceed 10% or to exceed 30% when combined with all rent increases since August 1, 2014. (See below.)

Will a banked rent increase of $42.33 plus the Increased Housing Service Costs Increase of $17.42 cause the tenant's rent to be increased by more than 10% this year?

The Rent Ordinance limits rent increases to no more than 10% in any one year for any combination of justifications.[26] Here, the tenant's prior rent was $830 a month. Ten percent of that is $83.00. The combined rent increase total is $59.75. This is not more than 10%. Therefore, the owner is entitled to a rent increase of $59.75, unless that increase would be more than 30% since August 1, 2014.

Will a banked rent increase of $42.33 plus the Increased Housing Service Costs increase of $17.42 cause the tenant's rent to be increased by more than 30% since August 1, 2014?

In August of 2014, the Oakland City Council amended the Ordinance to state that "no series of rent increases in any five-year period can exceed 30 percent for any rent increase based on the CPI Rent Adjustment, as set out in O.M.C. 8.22.070B ....and any justifications pursuant to O.M.C. 8.22.070C 2....." O.M.C. § 8.22.070(A)(3). The only exceptions to this rule is if the owner is basing the rent increases solely on CPI Adjustments or if the rent increase is required to provide the owner with a "fair return."[27]

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[23] O.M.C.§ 8.22.070
[24] Regulations Appendix, §10.5.1
[25] Regulations Appendix, §10.5.3
[26] O.M.C. § 8.22.070(A)(3)
[27] In this case the owner did not claim (nor did he provide evidence to support such a claim) that he was denied a "fair return". Additionally, the rent increases in the past were not based on the CPI, but instead were a series of increased housing service cost increases.

The evidence established that in August of 2014, the tenant's rent was $830 a month. (Both parties stated on the *Tenant Petition* and *Owner Response* forms that the tenant's rent was increased to $830 a month in March of 2014. Based on the Hearing Decision in T15-0069, it remained that amount at all relevant times since then.)

Before the rent increase in question, the tenant's rent was $830. Increasing the tenant's rent by $59.75, will not cause the tenant's rent to be increased by more than 30% since August 1, 2014.

The tenant's rent, effective March 1, 2016, is $889.75 a month.

How much restitution is owed between the parties and how does it affect the rent?

The testimony at the Hearing established that the tenant has been paying rent in the amount of $958.56 a month since March 1, 2016. Additionally, the tenant never decreased her rent in response to the Hearing Decision in case T15-0069. The tenant's overpayments are shown on the following chart:

Month	Rent	Payment Made	Overpayment
March 2015	$830	$910.56	$80.56
April 2015	$830	$910.56	$80.56
May 2015	$830	$910.56	$80.56
June 2015	$830	$910.56	$80.56
July 2015	$830	$910.56	$80.56
August 2015	$830	$910.56	$80.56
September 2015	$830	$910.56	$80.56
October 2015	$830	$910.56	$80.56
November 2015	$830	$910.56	$80.56
December 2015	$830	$910.56	$80.56
January 2016	$830	$910.56	$80.56
February 2016	$830	$910.56	$80.56
March 2016	$889.75	$958.56	$68.81
April 2016	$889.75	$958.56	$68.81
May 2016	$889.75	$958.56	$68.81
June 2016	$889.75	$958.56	$68.81
July 2016	$889.75	$958.56	$68.81
August 2016	$889.75	$958.56	$68.81
September 2016	$889.75	$958.56	$68.81
Total			**$1,448.39**

Therefore, she has overpaid rent in the amount of $1,448.39.

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The tenant does not have to wait until the appeal in the prior case is over to take this restitution. O.M.C. § 8.22.070(D)(3) states that "when a party appeals the decision of a Hearing Officer, the tenant must continue to pay the amount of the rent adjustment due during the period prior to the issuance of the decision and the remaining amount is not operative until the board has issued its written decision." In T15-0069, the owner had increased the rent from $830 to $910.56 a month. Since the rent increase notice in that case did not specify the amount of the CPI, the tenant was allowed to pay $830 before the Hearing. The restitution ordered by the Hearing Officer in that case, was to restore her to the $830 allowable monthly rent. Therefore, the tenant is entitled to that restitution while the appeal in the prior case is pending.

A rent overpayment of this size is usually adjusted over a period of 12 months.[28] Therefore, the tenant's rent decrease is $120.70. For now this $120.70 a month is subtracted from the current legal rent of $889.75 for a total of $769.05 a month. From October of 2016 through September of 2017 the rent will be $769.05 a month. The rent will revert to the new rent of $889.75 a month in October of 2018.

ORDER

1. Petition T16-0141 is granted in part.

2. The owner is entitled to a rent increase based on increased housing service costs in the amount of $17.42 a month, effective March 1, 2016.

3. The owner is entitled to a $42.33 rent increase based on banking effective March 1, 2016.

4. The tenant's base rent, as of March 1, 2016, is $889.75 a month.

5. The tenant has overpaid rent in the amount of $1,448.39. This overpayment is adjusted by a rent decrease for the next 12 months in the amount of $120.70 a month.

6. The tenant's rent for the months of October 2016 through September of 2017 is $769.05 a month.

7. If the owner wishes too, he can pay the tenant restitution in one lump sum. If he does so, the tenant must stop subtracting the monthly restitution amounts.

8. The tenant's rent will revert to the base rent of $889.75 in October of 2017.

9. The owner may otherwise be entitled to a rent increase, according to the rules of the Rent Adjustment Ordinance and the Civil Code on March 1, 2017. If the owner increases the rent before the restitution period is over, the continuing monthly restitution amount should be subtracted from the new rent.

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[28] Regulations, § 8.22.110(F)(4)

10. 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: September 14, 2016

Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

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2015	Date	Amount	Amount Allowed	Evidence	Purpose	Reasons for Adjustment
Payless Nursery	9/25/2015	$36.98	$36.98	Ex 17, p 18	planting supplies	
Home Depot	9/26/2015	$293.84	$293.84	Ex 17, p 20	Planting supplies and hardware	
Payless Nursery	9/27/2015	$36.93	$36.93	Ex 17, p 18	Planting supplies	
Orchard Supply	9/27/2015	$15.20	$15.20	Ex 17, p 19	Planting supplies	
Home Depot	9/27/2015	$65.78	$65.78	Ex 17, p 20	Planting supplies	
Payless Nursery	10/3/2015	$36.98	$36.98	Ex 17, p 18	Planting supplies	
Home Depot	10/3/2015	$50.32	$50.32	Ex 17, p 21	Planting supplies	
Payless Nursery	10/10/2015	$36.98	$36.98	Ex 17, p 21	Planting supplies	
Fry's	10/10/2015	$2.16	$2.16	Ex 17, p 26	Batteries	
Home Depot	10/11/2015	$32.45	$32.45	Ex 17, p 22	Landscaping	
Home Depot	10/18/2015	$5.87	$5.87	Ex 17, p 21	Electrical	
Home Depot	10/24/2015	$18.01	$18.01	Ex 17, p 22	Electrical	
Orchard Supply	10/30/2015	$108.74	$108.74	Ex 7, p 7	Plumbing	
Home Depot	11/7/2015	$77.06	$77.06	Ex 17, p 22	Landscaping	
Home Depot	11/14/2015	$17.50	$17.50	Ex 17, p 23	Plumbing supplies	
Orchard Supply	11/14/2015	$32.61	$32.61	Ex 17, p 24	Plumbing supplies	
Orchard Supply	11/14/2015	-$108.74	-$108.74	Ex 17, p 24	Plumbing supplies	
Lowe's	11/18/2015	$8.38	$8.38	Ex 17, p 23	Hardware	
Home Depot	11/21/2015	$8.74	$8.74	Ex 17, p 23	Tools	
Orchard Supply	11/21/2015	-$32.61	-$32.61	Ex 17, p 24	Plumbing supplies	
Home Depot	11/28/2015	$122.80	$122.80	Ex 17, p 25	Landscaping	
Home Depot	11/28/2015	$8.18	$8.18	Ex 17, p 25	Plumbing supplies	
Payless Nursery	11/29/2015	$36.98	$36.98	Ex 17, p 25	Landscaping	
Home Depot	12/4/2015	$71.56	$71.56	Ex 17, p 26	Unknown	
Orchard Supply	12/5/2015	$2.18	$2.18	Ex 17, p 26	Landscaping	
Payless Nursery	12/12/2015	$36.98	$36.98	Ex 17, p 27	Landscaping	
Payless Nursery	12/13/2015	$36.98	$36.98	Ex 17, p 27	Landscaping	
Payless Nursery	12/19/2015	$36.98	$36.98	Ex 17, p 28	Landscaping	
Home Depot	12/20/2015	$141.19	$41.19	Ex 17, p 27	Hardware/$100 gift card	Took off gift card
Orchard Supply	12/21/2015	$24.73	$24.73	Ex 17, p 28	Plumbing supplies	
Home Depot	12/27/2015	$85.99	$85.99	Ex 17, p 28	Plumbing supplies	
Total:		$5,603.00	$5,503.00			

Exhibit A
Repair and Maintenance 2015
Menegstu v. Wong, T16-0141

Date:	To Whom:	Amount	Evidence	For
1/12/2015	USPS	$5.95	Ex 7, p 5	Certified Mail to CA
1/15/2015	USPS	$3.79	Ex 7, p 5	Certified Mail to CA
1/26/2015	USPS	$15.16	Ex 7, p 6	Certified Mail to CA
2/3/2015	USPS	$5.43	Ex 7, p 5	Certified Mail to CA
2/9/2015	City of Oakland	$13.00	Ex 7, p 7	Permit Costs
2/14/2015	USPS	$62.00	Ex 7, p 13	PO Box Costs
3/9/2015	USPS	$9.54	Ex 7, p 8	Certified Mail to CA
3/10/2015	USPS	$3.79	Ex 7, p 1	Certified Mail to CA
3/16/2015	USPS	$10.24	Ex 7, p 4	Certified Mail to CA
3/23/2015	USPS	$3.79	Ex 7, p 9	Certified Mail to UT
3/23/2015	USPS	$3.79	Ex 7, p 9	Certified Mail to CA
4/20/2015	USPS	$3.79	Ex 7, p 8	Certified Mail to CA
4/20/2015	Skarbek Law Office	$60.00	Ex 11, p 1	Ex Parte
4/20/2015	Skarbek Law Offices	$17.00	Ex 11, p 1	Documents Mailed
5/4/2015	Skarbek Law Office	$34.00	Ex 11, p 1	Documents Mailed
5/6/2015	USPS	$5.54	Ex 7, p 4	Certified Mail to CA
5/6/2015	Skarbek Law Office	$17.00	Ex 11, p 1	Documents Mailed
5/6/2015	Skarbek Law Office	$50.00	Ex 11, p 1	Service of Writ
5/6/2015	Skarbek Law Office	$25.00	Ex 11, p 1	Writ of Possession
5/8/2015	USPS	$3.79	Ex 7, p 11	Certified Mail to CA
5/25/2015	USPS	$3.75	Ex 7, p 6	Certified Mail to CA
5/25/2015	USPS	$4.00	Ex 7, p 6	Certified Mail to UT
5/28/2015	City of Oakland	$12.70	Ex 7, p 12	Copies
6/3/2015	USPS	$13.34	Ex 7, p 2	Certified Mail to CA
6/3/2015	USPS	$7.88	Ex 7, p 6	Certified Mail to CA
6/15/2015	USPS	$3.94	Ex 7, p 2	Certified Mail to CA
7/6/2015	USPS	$16.69	Ex 7, p 11	Certified Mail to CA
7/6/2015	USPS	$3.94	Ex 7, p 11	Certified Mail to CA
7/16/2015	USPS	$3.94	Ex 7, p 10	Certified Mail to CA
7/24/2015	USPS	$10.68	Ex 7, p 1	Certified Mail to CA
8/6/2015	USPS	$19.60	Ex 7, p 7	stamps
8/10/2015	USPS	$3.94	Ex 7, p 7	Certified Mail
8/10/2015	USPS	$24.40	Ex 7, p 10	Certified Mail to CA
9/14/2015	USPS	$9.20	Ex 7, p 3	Certified Mail to CA
9/18/2015	USPS	$1.20	Ex 7, p 1	Certified Mail to PA
10/14/2015	USPS	$18.50	Ex 7, p 14	Certified Mail to CA
11/13/2015	USPS	$7.88	Ex 7, p 9	Certified Mail to CA
11/16/2015	USPS	$3.94	Ex 7, p 9	Certified Mail to CA
11/18/2015	USPS	$3.94	Ex 7, p 10	Certified Mail to CA
11/30/2015	USPS	$1.69	Ex 7, p 3	Stamps
12/7/2015	USPS	$3.94	Ex 7, p 3	Certified Mail to CA
12/15/2015	USPS	$8.10	Ex 7, p 4	Certified Mail to CA
12/18/2015	USPS	$7.88	Ex 7, p 2	Certified Mail to CA
unreadable 2015	USPS	$4.49	Ex 7, p 8	Certified Mail to CA
11/24/2015	City of Oakland	$22.00	Ex 17, p 29	Audio Recording
	Total	**$574.16**		

INCREASED HOUSING SERVICE COSTS, p.1 Income and Expenses.

Effective Date of Increase: 3/1/2016

INCOME

			Notes	2014	2015
1	Rents			$67,080.00	$70,241.97
2	Laundry				$350.00
3	Parking				
4	Other, specify:				
5	Other, specify:				
6	Other, specify:				
7	Other, specify:				
8	(sum of lines 2-8)		Gross Operating Income	$67,080.00	$70,591.97

EXPENSES

			Notes	2014	2015
9	Business License Tax			$935.77	$1,057.10
10	Electricity/Gas			$106.23	$153.55
11	Parking			$350.00	
12	Insurance			$1,181.00	$1,114.00
13	Laundry				
14	Parking expense				
15	Refuse removal			$2,353.00	$2,960.87
16	Replacement				
17	Security				
18	Taxes			$10,573.00	$10,712.50
19	Water/Sewer			$1,946.00	$2,301.50
20	Other: (specify)				
21	(sum of lines 9-20)		Gross Operating Expenses	$17,445.00	$18,299.52

	AND EITHER:	2014	2015
22	Maintenance/Repairs		$5,503.00
23	Management expenses/accounting/legal		$565.17
24	SUBTOTAL	$0.00	$6,068.17
	OR:		
25	8% of gross op. income	$ 5,366.40	$5,647.36

	The greater of either line 24 or line 25	$5,366.40	$6,068.17

26	Other expense, specify:				
27	Other expense, specify:				
28			Total Net Operating Expenses	$22,811.40	$24,367.69
29			Difference in expenses (YR2-YR1)		$1,556.29

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2015	Date	Amount	Amount Allowed	Evidence	Purpose	Reasons for Adjustment
Lowe's	1/3/2015	$25.81	$25.81	Ex 17, p 11	Rodent Supplies	
Home Depot	1/3/2015	$5.23	$5.23	Ex 17, p 11	Hardware	
A&E Factory Service	1/5/2015	$176.67	$176.67	Ex 17, p 16	Repair stove	
Home Depot	1/10/2015	$43.08	$43.08	Ex 17, p 13	Hardware	
Orchard Supply	1/11/2015	$3.80	$3.80	Ex 17, p 11	Batteries	
Home Depot	1/24/2015	$16.99	$16.99	Ex 17, p 13	Rodent Supplies	
Steve Lipton	1/31/2015	$206.03	$206.03	Ex 12, p 1		
Home Depot	1/31/2015	$28.07	$28.07	Ex 17, p 12	Blinds	
Home Depot	1/31/2015	$6.47	$6.47	Ex 17, p 12	Hardware	
Home Depot	2/1/2015	$17.28	$17.28	Ex 17, p 14	Supplies	
Lowe's	2/7/2015	$14.43	$14.43	Ex 17, p 12	Blinds	
Home Depot	2/7/2015	$36.36	$36.36	Ex 17, p 13	Blinds	
				Exhibit 6, p 1 and Ex		
A&E	2/10/2015	$240.67	$240.67	17, p 16	Repair Appliance	
Orchard Supply	2/15/2015	$569.41	$569.41	Ex 17, p 14	Waterheater	
Orchard Supply	2/15/2015	$26.80	$26.80	Ex 17, p 17	Tools	
Sizemore Services	3/2/2015	$125.31	$125.31	Ex 12, p 2	Property Clean up	
Home Depot	3/13/2015	$3.22	$3.22	Ex 17, p 15	Bucket	
Home Depot	3/15/2015	$4.32	$4.32	Ex 17, p 15	Tools	
Home Depot	4/3/2015	$19.58	$19.58	Ex 17, p 17	Painting supplies	
Orchard Supply	4/14/2015	$13.47	$13.47	Ex 17, p 15	Tools	
Home Depot	5/21/2015	$8.66	$8.66	Ex 17, p 10	Hardware	
Home Depot	5/31/2015	$17.57	$17.57	Ex 17, p 10	Tools	
Home Depot	6/6/2015	$190.45	$190.45	Ex 17, p 17	Tools	
Simplified Plumbing	6/6/2015	$330.00	$330.00	Ex 17, p 30	Plumbing	
Home Depot	6/14/2015	$15.46	$15.46	Ex 17, p 2	Lumber	
Lowe's	6/14/2015	$454.23	$454.23	Ex 17, p 3	Hardware	
Home Depot	6/14/2015	$134.39	$134.39	Ex 17, p 5	Painting supplies	
Home Depot	6/19/2015	$121.98	$121.98	Ex 17, p 3	Lumber	
Home Depot	6/20/2015	$577.83	$577.83	Ex 17, p 1	Lumber	
Home Depot	6/20/2015	$30.77	$30.77	Ex 17, p 4	Lumber	
Home Depot	6/20/2015	$19.37	$19.37	Ex 17, p 4	Lumber	
Home Depot	6/27/2015	$117.31	$117.31	Ex 17, p 6	Lumber	
Home Depot	6/29/2015	$4.86	$4.86	Ex 17, p 2	Paint	
Home Depot	6/30/2015	$11.59	$11.59	Ex 17, p 1	Lumber	
Home Depot	7/4/2015	$1.08	$1.08	Ex 7, p 10	Hardware	
Orchard Supply	7/8/2015	$12.48	$12.48	Ex 7, p 7	Hardware	
Home Depot	7/8/2015	unreadable	$0.00	Ex 7, p 9	Plumbing	
Sizemore Services	7/17/2015	$160.00	$160.00	Ex 12, p 3	Property Clean up	
Fry's	9/2/2015	$2.16	$2.16	Ex 7, p 8	Batteries	
Orchard Supply	9/6/2015	$119.99	$119.99	Ex 7, p 7	?	
Orchard Supply	9/8/2015	$11.95	$11.95	Ex 17, p 19	tools	
Orchard Supply	9/8/2015	-$132.47	-$132.47	Ex 17, p 19	Returns	
Home Depot	9/11/2015	$289.00	$289.00	Ex 17, p 20	Plumbing supplies	
Home Depot	9/12/2015	$111.41	$111.41	Ex 7, p 15	Landscaping	
Home Depot	9/12/2015	$8.24	$8.24	Ex 7, p9	Plumbing	
Payless Nursery	9/12/2015	$36.98	$36.98	Ex 7, p 9	Landscaping	
Payless Nursery	9/13/2015	$16.98	$16.98	Ex 7, p 8	Landscaping	

Increased Housing Costs, p.2

CALCULATION OF IHC RENT INCREASE

	Calculation of Increase as a Percentage		
	RAP Regulations - Appendix A, §10.1.1		
1	(Income and Expenses, line 29)	Annual expenses increased by	$1,556.29
2	(line 1 divided by 12)	Average monthly increased expenses	$129.69
3	(total of Y2 rents below)	Monthly gross rental income	$6,178.26
3a			
4	(line 2 divided by line 3)	**Percent increase**	2.10%
		Is Percent increase greater than CPI?	YES
		Is increase greater than 10%	NO

		Allocation of Increase: CPI or IHC or 10%?		
Unit	**Rent from Year 2 (monthly)**	**$ Increase**	**New Rent**	
80	$910.56	$19.11	$929.67	IHC
82	$913.00	$19.17	$932.17	IHC
84	$830.00	$17.42	$847.42	IHC
86	$2,200.00	$46.18	$2,246.18	IHC
88	$1,324.70	$27.81	$1,352.51	IHC
Monthly	$6,178.26	$129.69		
Annual	$74,139.12			

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CITY OF OAKLAND

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

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

CALCULATION OF DEFERRED CPI INCREASES (BANKING)

Initial move-in date	1-Nov-2009
Effective date of increase	1-Mar-2016
Current rent (before increase and without prior cap. improve pass-through)	$830
Prior cap. imp. pass-through	
Date calculation begins	1-Nov-2009
Base rent when calc.begins	$700

MUST FILL IN D9, D10, D11 and D14

Case No.: T16-0141
Unit: 84

CHANGE YELLOW CELLS ONLY

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

ANNUAL INCREASES TABLE

Year Ending	Debt Serv. or Fair Return increase	Housing Serv. Costs increase	Base Rent Reduction	Annual %	CPI Increase	Rent Ceiling
11/1/2015				1.7%	None	$ 885.28
11/1/2014		80.00		1.9%	None	$ 885.28
11/1/2013		50.00		2.1%	None	$ 805.28
11/1/2012				3.0%	$ 22.00	$ 755.28
11/1/2011				2.0%	$ 14.38	$ 733.28
11/1/2010				2.7%	$ 18.90	$ 718.90
11/1/2009				-	-	$700

Calculation of Limit on Increase

Prior base rent	$830.00
Banking limit this year (3 x current CPI and not more than 10%)	5.1%
Banking available this year	$ 42.33
Banking this year + base rent	$ 872.33
Prior capital improvements recovery	$ -
Rent ceiling w/o other new increases	$ **872.33**

Notes:

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

PROOF OF SERVICE

Case Number T16-0141

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

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

Tenant
Frehewit Yizengaw Menegstu
80 Fairmount Ave #84
Oakland, CA 94611

Owner
Ming G. Wong
P.O. Box 51346
San Jose, CA 95151

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 14, 2016 in Oakland, CA.

Deborah Griffin