



**City of Mountain View
Rental Housing Committee Meeting
April 25, 2024, Agenda Item Questions**

Item 5.1.: Appeal of Hearing Officer Decision Regarding Petition Numbers C23240003 and C23240004

Q: Retroactive RHC policy legality? How does a landlord or tenant agree on terms that can be changed at any point in the future?

A: The question is a bit unclear. Assuming this question is about the concessions regulations that the RHC adopted, those regulations did not change the definition of “Base Rent” in the CSFRA. Based on the definition of Base Rent in the CSFRA, Landlords *should have been* including concessions in the calculation of Base Rent since the effective date of the CSFRA. The RHC adopted regulations regarding concessions to make that clear to Landlords and Tenants. Therefore, the concessions regulations were not a retroactive application of new law to an existing agreement.

Q: Was the incorrect rent increase due to the retroactive concession policy still allowing for what the correct increase should have been? Or is the entire amount invalidated even if there was a portion of the increase that would have been correct disallowing the concession policy?

A: The entire rent increase was invalidated because the Landlord imposed the 2021 Annual General Adjustment on the incorrect Base Rent. In essence, \$2,358.33 is the actual “recalculated” Base Rent; it is not the “recalculated” Base Rent with concession plus the 2021 AGA.

Q: Reglazing appears to be considered by the home industry to be a valid and often recommended choice, according to many sources available for homeowners on the Web. Could the landlord argue in court that the tenant's refusal to grant access for remediation, even if repeating a prior failed remediation, left them with no recourse? Despite the two prior attempts being insufficient, it seems like the tenant must give access for reasonable repairs to be done.

A: The Landlord could make that argument in court. The requirement is that the Landlord adequately address the issue. If the issue is reoccurring, then the Tenant has an argument that the Landlord has not adequately addressed the issue. To provide a similar example, if there is a vermin infestation in a unit and the Landlord is regularly spraying but the vermin continue returning, then the Landlord may not be adequately addressing the issue and they, in fact, need to tent the property.

Q: Why is a leaking faucet or toilet considered a habitability flaw? they are still functional, but wasting water the landlord pays for.

A: First, Civil Code Section 1941.1, which is referenced in the CSFRA, provides that a dwelling unit is deemed untenable if it substantially lacks “plumbing...that conformed with applicable law in effect at the time of installation, *maintained in good working order.*” Second, the Tenant testified that the leaking faucet and toilet impacted her use and enjoyment of the property because it was an auditory annoyance (e.g., kept her up at night). Health & Safety Code Section 17920.3(e), which is also referenced by the CSFRA provides that any nuisance may constitute a habitability issue. Finally, Tenant here was being charged for water.

Q: Regarding the plumbing issue and wipes - was any information presented regarding other units on the property and why the plumber concluded the wipes are from this specific tenant and not others?

A: No, the Landlord did not provide any other information about the plumbing issue outside of stating that their plumber told them the issue was caused by wipes. At the Hearing, the Tenant did bring up this issue in their testimony; she noted that while she is not sure how the plumbing works, it is possible that the wipes came from other units.

Q: Is there an objective standard for laundry room cleanliness that can be applied to determine what is "messy" or temporary based on vandalism, as claimed, and what is a failure to provide hygienic facilities?

A: No, there is no objective standard regarding laundry room cleanliness.

Q: On p.2 of the Staff Report "Petitioner's Base Rent should have been determined by adding all of the rents actually paid by Petitioner in the first twelve (12) months of her tenancy – two (2) months of \$2,695.00 and ten (10) months of \$2,291.00 – and then dividing the sum (\$28,300.00) by twelve (12) for a Base Rent of \$2,358.33." I had thought that after hearings on what concessions would be included in the base rent, that the landlord would be entitled to up 2 months of concessions that would NOT be applied toward the calculation of the base rent. Is that correct? Were 2 months of concessions NOT excluded in the calculation because they were not applied to the first two months of the rent?

A: No, that is not correct. CSFRA Regulations, Chapter 2, Section b.2.ii provides that "the following shall not be considered in the calculation of 'Base Rent' for any Tenancy: First month's free or discounted Rent, where the 'first month' refers to the first full month following the start date of the Rental Agreement." In this case, the Landlord did not provide a rent concession in the first or last month of the initial term of the tenancy, they only provided a rent concession for the middle 10 months of the initial term of the tenancy. So, the amounts that were used to calculate the Base Rent in the Hearing Officer's Decision are the ACTUAL amounts charged by the Landlord and paid by the Tenant.

Q: On p. 3 of the Tentative Appeal Decision: "Respondent improperly changed the terms of the Lease regarding Utility Charges beginning October 2022." Can you elaborate on this improper action by the landlord? Did the landlord add an additional utility payment in excess of what was charged as rent? Or was it something else?

A: The Landlord began charging the Tenant for all Utility Charges (via RUBS) more than a year after the Tenant moved into the unit. That constitutes a rent increase that is prohibited by the CSFRA.

Q: On p. 3 of the Tentative Appeal Decision: "charging Petitioner for renters' insurance". It sounds like the issue was that the landlord required the tenant to show proof of insurance or to accept a fee for renters' insurance from the landlord, and that through some misunderstanding the tenant did not provide the proof until later. Is that right?

A: That is correct. Landlord required the Tenant to either get their own renters' insurance or to pay the Landlord for renters' insurance coverage. While the Tenant did get their own renters' insurance, the renters' insurance that the Tenant procured did not meet the requirements outlined by the Landlord (i.e., to have all adult occupants listed on the insurance policy). The Landlord failed to inform the Tenant about this issue and instead began charging Tenant for renters' insurance.

Q: What was the date the tenant first reported a habitability complaint to the landlord?

A: According to the Tenant's Petition, she reported the dumpster/parking issue to the Landlord weekly from the beginning of her tenancy (02/01/2021) and she reported the bathtub, shower, and sink reglazing issue to her Landlord on June 1, 2021.

Q: I understand and agree with the calculation of base rent of 2358.

Please confirm that the habitability issues are the reason that no AGA should be applied the base rent, because the habitability issues make the unit substantially out of compliance with the CSFRA.

A: The Hearing Officer's Decision concluded that the 2021 AGA could not have been applied because the Base Rent in the rent increase notice was incorrect and therefore the notice was invalid. It is unrelated to the habitability issues.

Q: The HO decision says "The Lease included a Standard Utility Addendum providing that the tenant shall be responsible for electricity, gas, telephone, cable TV, etc. as well as water and garbage services." The landlord provides only "energy to heat hot water." Does this addendum in the lease make it ok for the LL to begin charging for the utilities?

A: Again, the question is a little unclear. The "Standard Utility Addendum" was intended to inform the Tenant that she would be charged for utilities (namely water, sewer and trash) via RUBS. Under the regulations that were passed by the RHC, the landlord will not be able to charge the Tenant for Utility Charges via RUBS anymore and will have to do a One-Time Utility Adjustment Petition.

Q: If this petition did not include habitability issues, would the LL have been allowed to apply AGA's to the 2358 base rent, to determine the allowed rent, and the amount needed to be refunded?

A: No. The Landlord would not have been able to apply the AGAs to the \$2,358.00 Base Rent. The Landlord will have to issue a new rent increase notice in order to increase the rent.

Q: Can you share the excel of rent paid that is associated with these petitions?

A: A PDF copy of the excel file was provided in ProofPoint as part of the third batch of files labeled P-1 2 2023.08.25 Petition A Packet_Redacted.

Item 6.1: Options for Determining the Value of Rent Reductions Related to Habitability, Maintenance, and Housing Services Petitions

Q: In appeal hearings that we have seen over the last year, the appellant landlord has always questioned the determination of the hearing officer, but never the amount. Does the appellant have the right to question the amount of the award? Does the Rental Housing Committee have the right to adjust the amount if it is considered excessive or inadequate?

A: Yes. The Appellant may appeal on the basis that the amount of reduction/refund awarded by the Hearing Officer was either too large or too small. The Rental Housing Committee may adjust the amount if there is insufficient evidence in the record to support the Hearing Officer's determination of the amount of the reduction/refund and it is inadequate or excessive. However, the RHC would need to make its adjustments supported by evidence in the record.

Q: Of the other jurisdictions reviewed, do any offer guidance as a % of rent, rather than as a dollar amount?

A: Yes, as seen in Attachment 1 and referenced in the staff report under the section [Methodologies, Policies, and Regulations of Select, Comparable Rent Stabilization Jurisdictions in California with Habitability and Maintenance Petitions](#), the eight jurisdictions with *Detailed Rent Decrease Methodology in Regulations* (Alameda, Berkeley, City of Los Angeles, Los Gatos, Richmond, San Jose, Santa Monica and West Hollywood) offer guidance for calculations as a percentage of rent.

Q: Can you provide the link to "In response to this request, staff developed an online, searchable repository of prior decisions in 2023 for hearing officers to easily access this content."

A: The searchable repository was developed for hearing officers and as such contains the private information of affected parties. Staff can develop a redacted version of the repository for the RHC however, this will affect staff workload and will not be immediately available.

Item 7.1: Annual General Adjustment of Rent 2024

None

Item 7.2: Annual Election of Chairperson and Vice Chairperson

None