City of Mountain View

Rent Stabilization Program

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COMMUNITY STABILIZATION AND FAIR RENT ACT (CSFRA)
REQUEST FOR APPEAL OF PETITION HEARING DECISION

Communications and submissions during the COVID-19 Pandemic: To the extent practicable, all communications, submissions and notices shall be sent via email or other electronic means.

Any Party to a petition may appeal the Decision by *serving a written Request for Appeal on all applicable parties and then filing a copy of the completed form with the City* within **ten (10) calendar days** after the mailing of the Petition Decision. If no Appeals are filed within ten (10) calendar days, the decision will be considered final.

I hereby Appeal the Hearing Officer's Decision for the following Petition to the Rental Housing Committee:

Petition Case Number: C22230019, C22230025

Name of Hearing Officer: Barbara M. Anscher Decision Date: 3/20/2024

For the following Property Address, including Unit Number(s), if applicable:

2489 Whitney Drive [redacted], Mountain View, CA 94043

(Street Number) (Street Name) (Unit Number)

Person Appealing the Hearing Officer Decision *(if more than one person is appealing the petition decision, attach their contact information as applicable)*:

Name: Leslie J. Keyak, Manager
West Washington Properties, LLC Phone: [redacted]

Mailing Address: [redacted] Email: [redacted]

I am: ☐ A tenant affected by this petition. ☑ A landlord affected by this petition.

Reason for Appeal:

Please use the space below to clearly identify what issue and part of the Decision is the subject of the appeal (include section headings and subheadings, as necessary). Thoroughly explain the grounds for the appeal. For each issue you are appealing, provide the legal basis why the Rental Housing Committee should affirm, modify, reverse, or remand the Hearing Officer's Decision. *(continue on the next page; add additional pages if needed)*

See attached document

Filing Instructions:

Once you have completed this form and attached all relevant documents, **serve all parties with complete copies** before formally filing the Appeal with the City. Once served, please file a copy of the completed form with the City of Mountain View via email (preferred method) to patricia.black@mountainview.gov or by mailing to 500 Castro Street, Mountain View, CA 94041.

Declaration:

I (we) declare under penalty of perjury under the laws of the State of California that the foregoing and all attached pages, including documentation, are true, correct, and complete.

Signature: Leslie J. Keyak Date: 4/3/24

Print Name: Leslie J. Keyak

Este formulario está disponible en inglés y español. | 此表格有英文和中文版本

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Reason for Appeal *(Continued)*

See attached document

Proof of Service of Request for Appeal of Petition Hearing Decision

I declare that I am over eighteen years of age, and that I served one copy of the attached Appeal of Petition Hearing Decision after Remand on the ***affected party(ies) listed below by***:

☐ **Personal Service**

Delivering the documents in person on the ____ day of _____, 20____, at the address(es) or location(s above to the following individual(s).

☐ **Mail**

Placing the documents, enclosed in a sealed envelope with First-Class Postage fully paid, into a U.S. Postal Service Mailbox on the ____ day of _____, 20____, addressed as follows to the following individual(s).

☑ **Email**

Emailing the documents on the ____ day of _____, 20____, at the email address(es) as follows to the following individual(s).

Petitioner(s)

Celestina Sierra
2489 Whitney Dr [redacted]
Mountain View, CA 94043
[redacted]

Respondents

CM Property Management, Inc.
c/o Mayfield Apartments
Attn: Mark Katz and Teri Henson
[redacted]

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

Executed on this 4 day of April, 2024

Signature: Janet Billups

Print Name: Janet Billups

Address: [redacted]

RESPONDENT'S APPEAL OF PETITION HEARING DECISION
Case Numbers: C22230019, C22230025

I. INTRODUCTION

Respondent, West Washington Properties, LLC (hereinafter, "Respondent" or "Landlord") appeals the Hearing Officer Decision dated March 20, 2024, ("Decision") on multiple grounds. As described further herein, the Hearing Officer ("HO"), based on cascade of erroneous findings and unsupported and arbitrary conclusions, found that Petitioner was entitled to a rent refund of $34,931.23, or **more than 22 months (nearly two years) of her $1,530 per month rent**. The Decision was unjustified by the facts or the law, does not support the stated policies behind the rent reduction remedy, and is patently unjust to the Landlord. It should be reversed, or at the very least modified to be compliant with the CSFRA, California law, and common sense.

II. LEGAL STANDARDS

A. Maintenance and Correction Are Not Decreases in Service

In order to put this case into perspective, one must review the policy behind the rent reduction remedy offered to tenants in rent control jurisdictions. In *Golden Gateway Center v. San Francisco Residential Rent Stabilization and Arbitration Board* (1999) 73 Cal.App.4th 1204, the Court cited *Doric Realty Company v. Union City Rent Board* (1981) 182 N.J.Super. 486 [442 A.2d 652] for the public policy discussed therein regarding the rent reduction remedy. Noting that the ordinances must be accorded their plain meaning and be interpreted so as to advance the legislative purpose, the Court in *Doric* stated, "[I]t is clear that [the rent reduction ordinance] is intimately related to – and, indeed, a necessary corollary to – the rent control objectives of the ordinance. The section is designed to prevent landlords from effectuating a backdoor rent increase by decreasing services. (*Id.* at p. 491.) It further commented that "[s]ervices and amenities furnished by landlords, like everything else in life, are subject to breakdown. As long as the breakdown does not result from the landlord's failure or neglect and there are timely and reasonable measures taken for repair, temporary interruptions are not the kinds of decreases in service which justify a rent decrease under the ordinance. " (*Id.* at p. 493.)

Adopting the reasoning of *Doric*, the Court in *Golden Gateway* concluded that a housing service did not cease to be provided, simply because a landlord was attempting to repair or maintain the rental property and/or the rental units. It found that it would be unworkable and unreasonable to apply the ordinance to such a situation. The ordinance contemplates – indeed, requires – that landlords will provide repair and maintenance services, which by necessity will at times impact the services provided to the tenants. The Court held that this unavoidable type of inconvenience, which may interfere with housing services but which does not substantially interfere with the right to occupy the premises as a residence, does not entitle a tenant to a reduction in rent.

B. The CFSRA Allows For "Substantial Compliance"

As noted by the HO (see page 42 of Decision) the CSFRA's provisions regarding rent increases do not require perfection by the Landlord. Rather, they only prohibit rent increases where a landlord "[h]as failed to substantially comply with all provisions of this Article and all rules and regulations promulgated" (§ 1707(f)(1).) The Act does not provide specific definitions or examples of "substantial compliance," but the concept is well known in California law. For example, in *Green v. Superior Court* (1974) 10 Cal.3d 616, our Supreme Court recognized that breach of the warranty of habitability was a defense to an unlawful detainer action, but noted "[i]n most cases **substantial compliance** with those applicable building and housing code standards which materially affect health and safety will suffice to meet the landlord's obligations under the common law implied warranty of habitability we now recognize." (*Id.* at p. 637.)

Similarly, "substantial performance" under contract law has been defined as follows: "What constitutes substantial performance is a question of fact, but it is essential that there be no willful departure from the terms of the contract, and that the defects be such as may be easily remedied or compensated, so that the promisee may get practically what the contract calls for." (*Posner v. Grunwald-Marx, Inc.* (1961) 56 Cal.2d 169, 186-187.) Neither California law nor the CSFRA mandate perfect compliance, but by their plain text allow "substantial compliance" and require a material failure before a breach or violation may attach. (§1701(f)(1).)

C. The Implied Warranty of Habitability and Reasonable Value

As detailed further below, the HO awarded Petitioner large refunds of rent based on findings that the Landlord breached the "habitability" standards of California Civil Code §1941.1. (*See* Decision at p. 47 et seq.) Damages awarded for breach of habitability are for a refund in rent, to the extent the rent paid exceeded the reasonable value of the tenant's unit in its uninhabitable condition. (*Quevedo v. Braga* (1977) 72 Cal.App.3d Supp. 1, 8.) The "reasonable value" in the law is determined by the market value, so here, the rent being artificially below market as a result of rent control, means that without evidence that the Tenant's unit actually lost value, the HO could not rely on any breaches of habitability as a basis for reducing the rent.

The existence of a prohibited or uninhabitable condition or other noncompliance with applicable code standards does not necessarily constitute a breach of the warranty of habitability. In most cases, substantial compliance with applicable code standards materially affecting health and safety will satisfy a landlord's duties under the implied warranty of habitability. *Green v. Super. Ct. (Sumski)* (1974) 10 C.3d 616, 637-638. Whether the defect is "substantial" or "de minimis" (no actionable breach) is determined on a case-by-case basis. *Hall v. Municipal Court* (1974) 10 Cal.3d 641, 644. As discussed below, the HO applied arbitrary and capricious standards for habitability and made findings of material breaches unsupported by the evidence, then applied a measure of "damages" untethered from the facts or the law.

With this background, Respondent appeals the following specific findings, conclusions and orders of the HO:

III. SPECIFIC ISSUES BEING APPEALED

A. Base Rent, Utilities, Findings of Overpayment, and Order of Refund

The HO's Conclusions of Law numbers 1-3 (Decision at p. 65) and Decision numbers 1-3 (p. 66) should be reversed, because the HO erroneously determined that Landlord did not substantially comply with the CSFRA when it calculated Petitioner's Base Rent, issued her a refund, and subsequently increased the Petitioner's rent in 2017, 2018, 2019, 2021, and 2023.

First, the HO wrongly concluded that Landlord was required to add the Petitioner's single month of utility costs for October 2015 to her Base Rent as of that month, and use that amount as the Base Rent. Following from that conclusion, the HO determined that the Landlord, despite refunding the Petitioner $1,000 in rent for January 1, through April 30, 2017, should have included another $645.31. (Decision at p. 42.) In so concluding, the HO arbitrarily (and without any analysis or discussion) determined that, despite the Landlord's documented and undisputed efforts to comply with the then-new rent rollback requirements, it had not "substantially complied" with the CFSRA.

Respondent did substantially comply with the CFSRA. There was no evidence of any willful attempt to miscalculate the refund amount. There was not a shred of evidence presented by the Petitioner of any "willful departure from the terms" of the CFSRA. On the contrary, the evidence established the good faith and substantial compliance of the Landlord.

The recent history of this Rent Board further establishes that including Utilities was not clearly required by the CFSRA. Only a few months ago, in December 2023, did the City pass a resolution that takes ten pages to explain how utilities were to be calculated as rents. The Housing Department's own web page describes this new rule as "Utilities for fully covered units ***are going to be subject*** to the rent increase limitations of the CSFRA."[1] This acknowledges that prior to December 18, 2023, (or March 1 2024) they were not subject to the limitations. It is undisputed that the Property used (and for the time being still uses) RUBS to charge utilities to all Tenants including Petitioner.[2]

Based on this arbitrary conclusion that a single inadvertent (and understandable) payment of the rollback refund without including utilities was a material violation of the CFSRA, the HO determined that the Respondent was not entitled to raise Petitioner's rent

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[1] See https://www.mountainview.gov/our-city/departments/housing/rent-stabilization/utilities-charges-and-rubs (Emphasis added.)

[2] As noted in the Decision, it is undisputed that the Property uses RUBS billing for utilities. The fact that Petitioner's unit has three residents, but only Petitioner is on the Lease, means that Petitioner has been underbilled, not overbilled, for her usage of utilities. (Decision at p. 5.)

at any time since. (*See* Decision at p. 43 ("As discussed above, Respondent did not properly calculate the rent rollback and thus failed to refund the appropriate amount of overcharges for December 23, 2016 through April 30, 2017, so all subsequent rent increases are disallowed").)

Relying on her erroneous conclusions that the Landlord was not in substantial compliance with the CFSRA in 2016 and that all subsequent rent increases (though they were compliant with the Act) were illegal, the HO calculated a total rent refund of $8,357.18. (*See* Decision at pp. 42-46 and Decisions #1-3 on p. 66.) This was error and is manifestly unjust. The Board should reverse Conclusions 1-3 and Decisions 1-3 or at a minimum, remand to a Hearing Officer to determine whether the Respondent was in substantial compliance with the CSFRA as it was understood at the time of the alleged violations.

B. Findings Regarding Habitability / Decrease in Housing Services

Landlord also appeals several of the findings of fact and conclusions of law in the Decision regarding Petitioner's claims of lack of habitability and decreases in services. On these issues, too, the HO acted arbitrarily and capriciously in awarding tens of thousands of dollars of "reduced rent" without any substantive analysis or citation to authority, and by applying subjective standards that have no grounding in the statutes and regulations relied up on by the HO.

1. Arbitrary and Capricious Valuation of Common Area

Perhaps the most pervasive error in the Decision's findings regarding habitability and reduction of services relates to the HO's determinations regarding the common areas of the Property. On page 51 of the Decision, the HO asserts – without any citation to any authority whatsoever – that "[c]ommon areas at the Property can be treated as equivalent to an additional room in the Affected Unit, increasing it to five rooms with each room worth 20 percent of monthly rent. Therefore, use and enjoyment of the entire common area on the Property would be worth 20 percent of monthly rent." Thereafter, the HO applies this conclusion when calculating rent reductions for rodents (p. 51), parking lot lights (p. 53), the trash area (p. 55), "nuisance behaviors" by other tenants (p. 63), and the alleged lack of an on-site property manager (p. 64.)

Despite the HO's repeated reliance on this "20% of rent" valuation of the common area, the Decision does not identify any statute, ordinance, regulation, or even any evidentiary facts that support it. On the contrary, the Decision notes that there are 40 units that share the common area of the Property, spread over four buildings. (Decision at p. 26, Finding of Fact #1.) Because 40 units share the common area, the conclusion supported by the evidence is that each unit is paying for one-fortieth (2.5%) of the common area's value, not one-fifth (20%). In other words, to the extent that any reductions are justified based on the value of the common area services, the Decision should have calculated the reductions based on a percentage of that 2.5% share, not a 20% share.

If nothing else, the Board should remand with instructions to the HO to either identify evidence supporting the Decision's valuation of the common area as "worth 20% of monthly rent" or to recalculate any rent refunds based on a valuation of 2.5% of rent.

2. Rent Reduction for Second-Hand Smoke

The Decision awards another $8,039.90 in rent reduction in response to the HO's findings that the Petitioner was exposed to second-hand smoke from other tenants smoking in other units. This was also arbitrary and capricious, both on the finding that the Landlord did not live up to its legal responsibilities under the CFSRA and as to its calculation of the reduction.

The HO ignored and dismissed the extensive evidence of the Respondent's actions to respond to Petitioner's complaints that other tenants were smoking, and ignored the practical reality that it is impossible for any Landlord to continuously surveil and prevent tenants from breaking the non-smoking rule. The Petitioner did not present any objective evidence that second-hand smoke had entered her unit (e.g. test results or professional inspections) but the HO did not even question whether Petitioner had carried her burden of proof.

Instead, the HO relied on California's law of public nuisance (Decision at p. 48) and cited *Birke v. Oakwood Worldwide* (2009) 169 Cal.App.4th 1540, to conclude that the Landlord violated its duties to Petitioner and owed a rent reduction. That case, and nuisance law in general, requires a finding that the defendant did not take "reasonable steps" to abate the nuisance. (*Birke*, 169 Cal.App.4th at 1553.) But the Decision expressly – and improperly – states that the HO **would not consider** the reasonableness of the Landlord's actions. The Decision states the HO was "[s]etting aside the question of whether [Respondent] have really done all they could" (Decision at p. 49) and that "the case at issue is not about whether Property Manager is trying hard in the face of adversity" (Decision at p. 47.) But that is precisely the question that the "reasonable steps" element of nuisance law requires. By "setting it aside," and finding Landlord liable for nuisance and a reduction in rent, the HO acted arbitrarily and capriciously and contrary to law.

The HO also acted unreasonably in calculating the rent reduction for smoking. The Decision asserts that "Petitioner suffered from second-hand smoke entering the Affected Unit from March 15, 2019 through August 1, 2023, a total of 52 months and 17 days." The Petitioner did not claim that there was smoke in the Unit every single day of those 52 months and 17 days, and no evidence supports that conclusion. Yet, the HO applied a rent reduction calculated as if there were, by multiplying that number of days by ten percent of the Petitioner's rent.[3] (Decision at p. 51.)

[3] The HO's unexplained assertion the smoking complaints were "worth ten percent of the monthly rental value of the Affected Unit" without any explanation, support from the record, or any evidence whatsoever was also arbitrary and capricious.

The evidence showed that the Landlord cited tenants, gave them notices of violations, and otherwise took reasonable steps to prevent smoking in the other units of the property. It was unjust for the HO to claim that these efforts were beside the point, and instead find the Landlord liable for the acts of other tenants. The Board should reverse this rent reduction, or at a minimum remand to the Hearing Officer to consider the reasonableness of the Landlord's efforts when determining whether there was a breach, and requiring findings as to the actual number of days where the Petitioner was subject to any second-hand smoke.

3. Rent Reduction for Parking Lot Lights

The HO awarded $1,052.25 in rent reduction based on a finding that the parking lot lights were inadequate. The Petitioner did not present evidence that the lights were not repaired within a reasonable time, instead only showing evidence of single points in time. It was her burden to establish that the Landlord did not respond within a reasonable time, not the Landlord's burden to present maintenance records that satisfied the HO. Nor did the Petitioner assert that she suffered any harm from the lack of lights, or that it caused her any damage (*see* Decision at pp. 4, 10, 11.) Yet the Decision finds (without explanation) that "it would be reasonable to reduce rent 20 percent" of the common area value. (Decision at p. 53.) This is arbitrary. And as discussed *supra*, the HO improperly calculated the value of the common area as "20 percent of the monthly rent for the Affected Unit" when it should have been 2.5 percent. (*Id.*) The Board should reverse this reduction in rent, or should remand to the HO to explain the basis for finding a 20 percent reduction in rent, and to recalculate based on a non-arbitrary value for the common area.

4. Rent Reduction for Trash

The HO awarded $2,179.521 in rent reduction because, in the Decision's words, "not having unsightly and unsanitary trash around the dumpsters and outside individual rental units is worth 20% of" Petitioner's monthly rent. (Decision at p. 55.) This reduction was also arbitrary and unjust to Landlord.

As with its reduction for second-hand smoke, the HO improperly applied a strict liability standard to the Landlord's trash collection efforts. In the Decision's words, "the question here is not whether Property Manager is doing all it can think of doing with respect to the trash." By the HO's logic, it does not matter how reasonably the Landlord is acting, or how responsive the Landlord is to tenant complaints, or how material the complaints are; the Landlord should be liable for any "excess of trash on the Property." (Decision at p. 54.) But as Civil Code Section 1941.1 plainly states, its requirements for habitability is not violated unless a residence "substantially lacks" one of its required elements.

And as with its other common area reductions in rent, the Decision arbitrarily chose "20 percent" as the value of the common area when it should have been at most 2.5%, and compounded that error by concluding – again, without any explanation or reference to evidence or even logic –that the trash is worth 20% of the entire common area's value. And

further compounded the error by concluding – despite evidence of only intermittent problems with trash collection – that the "violation" was continuous for "35 months and 19 days." All of this was in error, unsupported by evidence.

The Board should reverse the rent reduction for trash or remand to the HO to justify, with evidence and not mere assertion, the basis for the number of days of non-compliance, the valuation of the common area, and the valuation of the trash portion of the common area.

5. Rent Reduction for Swimming Pool Closure

The Decision awards $1,872.00 to Petitioner for "the unusable swimming pool." This was unfair for several independent reasons and should be reversed.

First, the only evidence was that Petitioner's son, not Petitioner, used the pool. It is undisputed that Petitioner's son is not on the Lease as a resident. The Decision ignores this fact and nonetheless awards a rent reduction to Petitioner.

Second, the evidence established that a substantial portion of the time the pool was closed was because migrating ducks had landed on the pond, and that City officials had told the Landlord that the ducks could not be removed or otherwise disturbed. Thus, Landlord was in an impossible position: violate the law by removing the ducks, or be liable for rent reductions by keeping the pool closed. The HO gave no consideration to this Hobson's choice.

Third, the HO – again, without any explanation – abandoned her otherwise consistent use of the "common area rent value" measure of damages used in most of Petitioner's complaints regarding common area services, and instead calculated damages based on how much it costs to become a member of the El Camino YMCA. (Decision at p. 58.) The HO does not explain why the different measure of damages should apply to the pool, again being arbitrary and capricious and without support in the CSFRA or other authority.

6. Rent Reduction for Laundry Room Closure

The Decision awards $441.92 as "damages for the closure of the laundry rooms." This was error because, as the Decision expressly notes, it was only awarding "damages" for the time period between June 3, 2022 and September 28, 2022 when the Landlord was repairing vandalism damage to the laundry rooms and upgrading the laundry machines to use an app-based payment system. (Decision at pp. 59-60.) As explained *supra*, awarding damages to tenants for inconvenience due to maintenance and repair is contrary to law per the holding of *Golden Gateway Center*. Yet that is precisely what the HO did here: penalize the Landlord for maintaining and upgrading common facilities.

The Board should reverse the rent reduction for the laundry room closures as contrary to *Golden Gateway Center*.

7. Rent Reduction for "Nuisance Behaviors and Threatening Behaviors"

The HO awarded Petitioner an astounding $11,016 in rent reduction – a full 20 percent of Petitioner's rent over a three-year period – "due to the breach of the covenant of quiet enjoyment" that the HO concluded was caused by other tenants' "behaviors that constitute a nuisance, such as disorderly, peace-disturbing conduct, or behaviors that are threatening to the safety of others."

The Decision applied California law regarding the breach of the covenant of quiet enjoyment, which is a contractual right, and concluded, without authority, that the breach of this contractual covenant is also a statutory breach of the CSFRA. Importing a contractual right into a public statute without express authority is improper and unjust. If Petitioner believes that the Landlord breached the covenant of quiet enjoyment, her appropriate remedy is to seek damages at the Superior Court, either for constructive eviction or breach of lease, and the Landlord would be entitled to the affirmative defenses and evidentiary and procedural protections of civil law. Instead, the HO's importing of this entire body of law into the CSFRA via § 1702(h)'s catch-all clause ("any other benefit, privilege or facility…") has deprived Landlord of that due process.

Furthermore, the HO again calculated the "damages" arbitrarily and capriciously and without any attempt at reasoning and explanation, simply asserting "The right of a tenant to feel safe and comfortable in their home is a significant Housing Service, equivalent to the value of an additional room in a rental unit." (Decision at p. 63.) How did the HO arrive at this "equivalency"? The Decision does not explain, it cannot be found in the CSFRA, and it is impossible to otherwise discern. Yet it forms the basis for the HO's calculation of damages as "20 percent of the value of the monthly rent."

Moreover, upholding a rent reduction award of this magnitude in this circumstance would be terrible public policy. The HO concludes that the "nuisance and threatening behaviors" were a result of Landlord's agreement to rent vacant units at the Property to the unhoused population during the COVID pandemic, "but there was no support provided at the Property" for this population. (Decision at pp. 61-62.) As the saying goes, "no good deed goes unpunished." If the Board allows the Landlord to be found liable for a 20% rent reduction in this case, why would the Landlord – or any Landlord in the City – agree to assist the government with housing the unhoused during the next public health emergency?

The Board should reverse this rent reduction for "nuisance behaviors" and allow Petitioner to pursue her contractual rights in the appropriate judicial forum.

8. Rent Reduction for Lack of On-Site Property Manager

The HO awarded an additional $1,522.10 in rent reduction for a two-year period where the HO concluded that there was no on-site property manager, on the grounds that "the loss of an on-site manager during this crucial time mainly affected Petitioner's right to quiet enjoyment of her rental unit and the common areas, which it has been established [*sic*] are worth a 20 percent reduction in rent." (Decision at p. 64.)

First, as discussed *supra*, it has not "been established" that the common areas are worth 20% of the rental value: rather, that value was baldly asserted by the HO without any explanation or apparent basis. Second, to the extent that the reduction is due to the stated reasons that it "affected Petitioner's right to quiet enjoyment", the HO already awarded rent reduction for those alleged affects, and so awarding further damages to Petitioner for the same injury is unjust and unsupported by the law or evidence. And finally, as noted (but only in a footnote,) there is no legal requirement for an on-site property manager for a building, like Petitioner's, with less than 16 units.

The Board should reverse the rent reduction for the Property Manager issue.

C. "Stacked" Reductions to Common Area Rent

As just discussed *supra*, the Decision applied multiple reductions of rent related to the common areas of the Property. Viewing these reductions in combination makes readily apparent the lack of justification and arbitrary nature of the HO's reductions. In summary:

Rodent Infestation	= 2% of common area value (Decision p. 51)
Parking Lot Lighting	= 20% of common area value (p. 53)
Trash Collection	= 20% of common area value (p. 55)
Property Manager	= 20% of common area value (p. 64)

Thus, according to the HO, these four items alone comprise 62% of the value of the entire common area of the Property. Everything else – mailboxes, parking spaces, indoor areas, the pool, laundry rooms, etc.) is apparently worth only about one third of the value of the common area. This seems very hard to square with the reality of how tenants use common areas and highlights the sheer arbitrariness of the HO's use of the "20% of 20%" measure of damages throughout the Decision. Furthermore, rent reductions of similar magnitude (and thus presumably similar percentages of total common area value) were awarded to Petitioner for the laundry room and the pool.[4] If one assigns similar percentages ("20% of 20%") to those two rent reduction conclusions, they total 102% of the HO's asserted value of the common area. This is unsupportable on its face.

D. The Decision Denies Landlord Any Return on Investment

[4] As noted *supra*, the Decision does not explain the reasons the HO changed the measure of damages from a percentage of rental value to an "out of pocket replacement" measure for only the pool area and laundry room reductions. Once again, this variance highlights the lack of a principled legal or evidentiary basis for any of the Decision's awards, other than the whim of the HO.

Rent control laws must be "reasonably calculated to… provide landlords with a just and reasonable return on their property." *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 165 (*see* CSFRA §1700 (stating that "ensuring Landlords a fair and reasonable return on their investment" is one of the purposes of the CSFRA.) In its totality, the HO's conclusions regarding the Petitioner's claims effectively denies Landlord any return whatsoever. As already discussed, the Decision applies arbitrary and unjustified measures of damage that have no basis in the law and no legitimate relationship to the evidence. And the HO failed to apply the required standards of substantial compliance and material violations, instead awarding the Petitioner rent reductions based on purported violations of the CSFRA on a "strict liability" theory.

The result is a decision that effectively refunds two full years of rent to the Petitioner, denying any return whatsoever to the Respondent. It should not be upheld by the Board.

E. The Board's Appeal Procedures Are Unjust As Applied To This Action

Finally, Respondent objects to the Board's appeal process on the grounds that its lack of any accommodations for extension of time deny the Respondent a fair and reasonable opportunity to make arguments on appeal to the Board.

Chapter 5, Section H(1)(b) of the Regulations provides that any appeal must be filed within fifteen days of the date of the decision. The Decision in this case is dated March 20, 2024 and was sent on March 21, 2024. It is seventy-one pages long and took the HO three months to issue after the date of the hearing. The fifteen days allotted to Respondent for appeal included the Easter, Passover, and Cesar Chavez Day holidays, and two weekends, during school break weeks. Respondent, through its property manager, requested via email an extension of time to file the appeal, and was informed by Ms. Patricia Black that no extensions were permitted under the Regulations, and that Respondent's only alternative was to file a late appeal and request that the Board allow it to be heard, in their discretion.

An appeal deadline of fifteen days with no affordance for extensions of time (even for good cause) and under pain of having the appeal summarily denied without hearing if not timely filed, lacks sufficient due process and the fundamental fairness that any citizen is entitled to when petitioning the government's assessment of penalties against him. This is especially true since the HO was allowed ninety days to draft an Order of this length and detail.

IV. CONCLUSION

For all of the reasons stated herein, the Board should reverse the decisions of the Hearing Officer as to the specific awards objected to by Respondent. In the alternative, the Board should remand the case back to the Hearing Officer for such further procedures that will cure the errors identified herein.