



DATE: November 14, 2022

TO: Rental Housing Committee

FROM: Karen M. Tiedemann, Special Counsel to the Rental Housing Committee
Nazanin Salehi, Special Counsel to the Rental Housing Committee
Anky van Deursen, Rent Stabilization Program Manager

SUBJECT: Appeal of Hearing Decision Regarding Petition No. 21220016

RECOMMENDATION

Consider the Tentative Appeal Decision and either accept the Tentative Appeal Decision or modify the Tentative Appeal Decision with instructions to staff citing appropriate evidence in the record.

BACKGROUND

The instant appeal arises out of a tenant petition for downward adjustment of rent ("Petition") based on unlawful rent related to rent concessions provided during the initial term of the tenancy. The hearing on the petition was held on September 8, 2022, and the Hearing Officer's Decision ("Hearing Decision") was delivered on October 7, 2022. The Landlord timely appealed the Hearing Decision on October 11, 2022. A relevant timeline is provided below for reference.

Table 1: Relevant Timeline

<u>Date</u>	<u>Action</u>
July 15, 2022	RHC accepted petition regarding 511 Central Avenue, Apt. T Petition No. 21220016
August 24, 2022	Prehearing telephone conference held
August 24, 2022	Written Summary of Prehearing Conference and the Hearing Officer's Request for Documents served on parties
September 8, 2022	Hearing held
September 8, 2022	Hearing closed and Hearing Record closed
October 7, 2022	Hearing Decision delivered
October 11, 2022	Appeal submitted by Appellant-Landlord
November 14, 2022	Appeal hearing before RHC

The Petition requested a rent reduction on the basis that the Appellant-Landlord imposed the Annual General Adjustment (AGA) for 2021 and 2022 on the incorrect Base Rent. Specifically, the Petition alleged the Landlord's calculation of Base Rent failed to account for rent concessions that were provided by Landlord during the initial term of the Tenant's tenancy of the Property.

The Hearing Decision first addressed whether the one-month rent concession provided by Landlord was to be exempted from the calculation of Base Rent, pursuant to CSFRA Regulations, Chapter 2, Section (b)(2)(ii). This Section exempts concessions provided in the first month of the initial tenancy from Base Rent calculations. The Hearing Officer determined the rent concession was not exempt because it was applied to the second month, rather than the first month of the tenancy. Thereafter, the Hearing Decision addressed the proper calculation of Base Rent taking into consideration the rent concession that was provided during the initial term of the tenancy. The Hearing Officer determined that, pursuant to CSFRA Regulations, Chapter 2, Section (b)(2)(i), the correct Base Rent for the Property was the total rent actually paid by the Tenant over the course of the initial term of the lease (\$16,955) divided by the length of the initial lease term (12 months), amounting to \$1,416.25. Finally, the Hearing Decision concluded the rent increases imposed by the Landlord after May 1, 2022 were imposed on the incorrect Base Rent and, therefore, were greater than the permitted AGA for 2021 and 2022. As such, Petitioner was entitled to a downward adjustment of rent to the correct Base Rent and a rent refund to be calculated by the parties.

Appellant-Landlord raised one issue on appeal. On appeal, Landlord argued the Hearing Officer erroneously applied CSFRA Regulations, Chapter 2, Section (b)(2)(i) to the Petition because the Rental Housing Committee (RHC) intended this Regulation to go into effect on September 1, 2022, while the Petition raises questions about a rent concession that was provided before September 1, 2022.

The elements of the appeal are discussed in the Tentative Appeal Decision, as noted in Section C of this report below.

All parties to the Appeal are entitled to respond to the Tentative Appeal Decision. Responses to the Tentative Appeal Decision were due on November 9, 2022. To the extent responses are received, staff may provide a supplement to this report addressing the responses.

ANALYSIS

A. Role of the RHC

The role of the RHC is not to reweigh evidence submitted in support of or opposition to the Petition, unless the RHC chooses to hear the appeal *de novo* pursuant to Regulations, Chapter 5, Section H.5.a. *De novo* review would require the RHC to open the hearing record

and hold a new, formal hearing. Staff does not recommend *de novo* review for this appeal because the appeal raises only a question regarding the applicable law. Thus, the RHC’s role will be to determine whether the appealed elements of the Hearing Decision are supported by substantial evidence. This process mimics a trial court and appeal court. The trial court drafts a decision after weighing all the evidence and the appeal court reviews the decision to verify whether the decision was adequate.

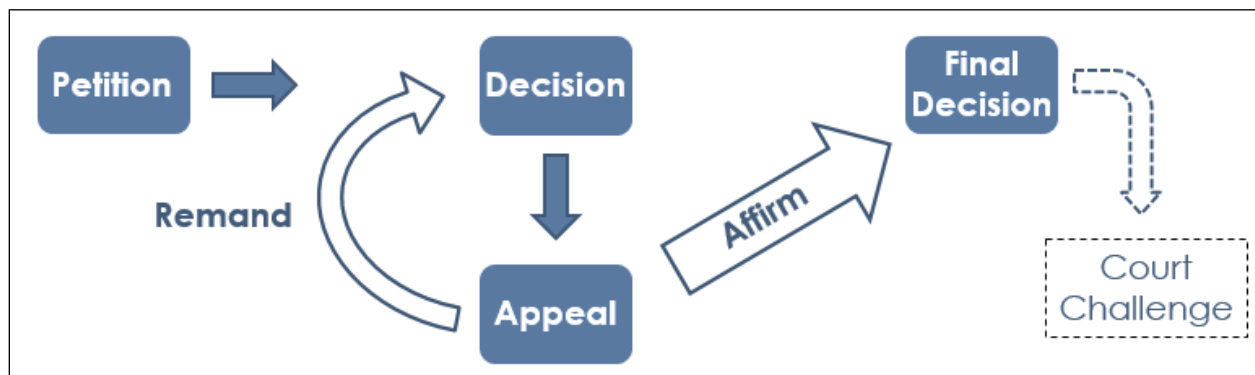
Legally, reviewing whether substantial evidence exists to support an appealed element of the decision simply means that there is adequate information in the record to support the decision. Stated differently, substantial evidence means that a reasonable person reviewing the evidence could have reached the same decision. Substantial evidence does not mean that RHC members (or RHC staff or special counsel) would have reached the same conclusion if they were present for every aspect of the hearing.

B. Review: Affirming, Reversing, and/or Remanding the Appealed Element of the Decision After Remand

Petitions define the scope of the Hearing Officer’s review. Appeals define the scope of RHC review of the Hearing Decision. The portions of the Hearing Decision that were not appealed by any party are considered final. The Tentative Appeal Decision reviews only those portions of Hearing Decision that were appealed by the parties.

The process for an appeal can result in multiple appeal hearings before the RHC if a Hearing Decision is remanded to the Hearing Officer. A summary graphic visualizing the appeal procedure is provided below:

Graphic 1: Visualization of Appeal Procedure



C. Tentative Appeal Decision—Appeal Elements

The Tentative Appeal Decision recommends affirming the Hearing Decision in its totality.

The Hearing Decision found that CSFRA Regulations, Chapter 2, Sections (b)(2)(i) and (b)(2)(ii), which were adopted by the RHC on July 18, 2022, applied to the calculation of Base Rent for the Property. Appellant-Landlord contends that the Hearing Officer erroneously applied the Regulations in question because the RHC intended that said Regulations would only apply to rent concessions provided on or after September 1, 2022. As detailed in the Tentative Appeal Decision, the Hearing Officer did not err in applying CSFRA Regulations, Chapter 2, Sections (b)(2)(i) and (b)(2)(ii) in the Petition because those Regulations are applicable to all tenancies commencing on or after October 19, 2015 and, regardless, the Regulations merely provided guidance about how Base Rent has always been and should be calculated.

D. Appeal Hearing Procedure

Each party to the appeal will have an opportunity to present their arguments to the RHC and respond to the other party’s presentation. As noted above, the parties are not to present new evidence. Likewise, the public may provide comment to the RHC before it hears any appeals (Gov. Code § 54954.3(a)). Finally, RHC members may have questions for staff and/or the parties. The following schedule for the appeal hearing is proposed to facilitate the orderly participation of all parties.

Schedule of Appeal(s) of Hearing Decision(s)	
<ul style="list-style-type: none"> Public Comment Period applicable for all Appeals on the agenda 	
Appeal Hearing (CSFRA Petition No. 21220016)	
Staff Report & Presentation	
Appellant-Landlord Presentation of Argument	10-minute maximum
Respondent-Tenant Presentation of Argument	10-minute maximum
Appellant-Landlord Presentation of Rebuttal	5-minute maximum
Respondent-Tenant Presentation of Rebuttal	5-minute maximum
RHC Question and Answer with Staff	
RHC Question and Answer with Appellant-Landlord	
RHC Question and Answer with Respondent-Tenants	
RHC Deliberations and Decision	
<ul style="list-style-type: none"> Conclude Agenda Item 	

FISCAL IMPACT

Adoption of the Tentative Appeal Decision, as drafted, could potentially lead to litigation, which would have fiscal impacts. Notably, one purpose of appealing a Hearing Decision to the RHC (as opposed to directly appealing to the courts) is to ensure that Hearing Decisions are legally

defensible, and so the appeal process to the RHC reduces the overall risk of legal liability and litigation expenses. As discussed above, the Tentative Appeal Decision recommends upholding the Hearing Decision in its entirety. If the RHC accepts the Tentative Appeal Decision, the Hearing Decision will be final.

PUBLIC NOTICING—Agenda posting.

KMT-NS-AvD/JS/8/CDD/RHC

814-11-14-22M-2

- Attachments:
1. Tentative Appeal Decision for Petition No. 21220016
 2. October 6, 2022 Hearing Decision for Petition No. 21220016
 3. October 11, 2022 Appellant-Landlord Appeal of Decision for Petition No. 210016