

CITY OF MOUNTAIN VIEW

**DECISION ON REMAND FROM THE RENTAL HOUSING COMMITTEE
PURSUANT TO THE COMMUNITY STABILIZATION AND FAIR RENT ACT**

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| Rental Housing Committee Case Nos.: | Consolidated petitions 18190033, 18190025 and 18190026 |
| Address and Units of the Rental Property: | 857 Park Dr. #8 |
| Petitioner Tenant Name(s): | Annemarie Wilson (Unit #8) |
| Respondent Landlord Names(s) | Linda Curtis Larry Voytilla |
| Hearing Officer: | E. Alexandra DeLateur |
| Date of Hearing: | November 30, 2018 |
| Date Hearing Record Closed: | December 24, 2018 |
| Date of Decision: | January 23, 2019 <i>(as part of a consolidated matter with 18190025 and 18190033)</i> |
| Date of Decision on Appeal | On or about March 12, 2019 |
| Date of Decision on Remand: | April 16, 2019 |
| Date of Mailing: | (See Attached Proof of Service) |

Following the appeal of the consolidated petitions 18190033, 18190025 and 18190026 to the Rental Housing Committee (“RHC”) which issued an Order of Remand on or about March 12, 2019, the hearing officer has reviewed the order of remand and considered the comments therein. The Order of Remand deals only with the downward adjustment of rent for the loss of housing services for Unit #8 based upon the painting issue (Petition B RHC Case # 181900026) discussed in Section IV. B, Section V.C, and Section VI. 4, d. of the original decision after hearing. Therefore, the hearing officer submits the following:

Section IV. B “Evidence Presented: Habitability and Maintenance Issues”

The RHC has requested clarification as to the evidence at hearing regarding the painting issues for Unit #8. The hearing officer hereby clarifies that the testimony of the witnesses, including Ms. Curtis and Ms. Wilson, indicated that a wall or, perhaps, two walls, of Unit #8 were repainted during Ms. Wilson’s tenancy which commenced in 2007. The parties agreed in their testimony that the unit had not been repainted in its entirety during Ms. Wilson’s tenancy. The Landlords/respondents did not produce any documentation or other proof of how much

repainting had been done. It appeared to the hearing officer that if there were definitive records of painting the unit, they would be in the possession of the landlords/respondents, yet none were presented at the hearing or during the period that the hearing was held open for additional evidence.

An additional consideration was that Ms. Wilson presented a copy of a lease dated March 4, 2015 which specifically required the landlords/respondents to paint her unit. See Hearing Officer Exhibit 3, Wilson's Petition B which attached a copy of the lease. This handwritten term of the lease appeared important to her and she testified that it was a culmination of numerous verbal requests. Ms. Wilson testified that although the landlords/respondents had verbally agreed to repaint Unit #8, they had not performed the painting over an unspecified period of time. Therefore, Ms. Wilson had negotiated the repainting term into the Lease dated March 4, 2015 ("2015 lease") which called for monthly rent of \$1,450.00 per month.

Section V.C: Discussion Re: Petitioner's Petition B Unit #8

The 2015 lease stated in part that the landlords/respondents would "Paint apt. again soon." It appears that the entire apartment should have been repainted since no specific areas are noted and there are no limitations listed. Unfortunately, the evidence presented at the hearing was not specific regarding whether the partial painting of a wall or two occurred prior to or after the execution of the 2015 lease. The interpretation by the hearing officer is based on the overall evidence presented and concluded that the partial painting of the wall, or walls, took place prior to the 2015 lease and, therefore, did not represent partial compliance with the term in the 2015 lease. Therefore, the reduction in housing services is total because there was no re-painting of any portion of the unit in accordance with the 2015 lease. No evidence to the contrary was presented at the hearing or in their submission of additional evidence after hearing by the landlords/respondents who, in the usual rental relationship, would have records of such maintenance work.

The hearing officer is mindful that valuing the reduction of housing services at 5% of the lawful rent may appear high when applied to a period of years. However, it is not unreasonable considering the conduct of the parties here. The petitioner, Ms. Wilson, testified that she had repeatedly asked for her unit to be repainted, and the landlords/respondents had verbally agreed to do so. They failed to repaint the entire unit. She then negotiated a specific provision in the 2015 lease to make sure that her unit was repainted, yet landlords failed to meet that term of the lease. She continued to pay her full, lawful rent and an even a higher, unlawful rent starting in April 2017 with the reasonable expectation that her unit would be entirely repainted.¹ The petitioner's enjoyment of her unit was negatively impacted according to her testimony. Although the respondents testified that the paint in the unit looked fine to them, their statements were not persuasive as to the condition of the paint or the level of impact on the petitioner. In

¹ Please see Ms. Wilson's Petition A RHC Case # 181900025 for a Downward Rent Adjustment-Unlawful Rent, the Decision dated January 23, 2019 and the Decision on Appeal dated on or about March 12, 2019.

petitioner's testimony under oath, she indicated that the paint in the unit was an important part of her quiet enjoyment of her unit and respondents were aware of how important it was to her since the special term was added to the 2015 lease. It would be inequitable to allow respondents to now belittle that term of the lease now, almost four (4) years later. Therefore, it is not simply the cost of painting that is at issue here, but rather damages for the impact of the failure to re-paint the unit on the tenant.

The hearing officer notes that the original decision indicated an award of damages for the month of March 2015; however, the 2015 lease term began on April 1, 2015 so the calculation of damages in the original decision started in April 2015. The total damages from April 2015 through January 2019 (46 months at \$72.50 per month) are correct: \$3,335.00. Due to the timing of the proceedings in this matter, the hearing officer has no evidence of whether the landlords/respondents have repainted the unit after February 1, 2019 and, therefore, has provided for an accrual of the downward adjustment of rent on this issue to be applied to the facts after February 1, 2019.

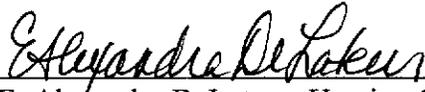
VI. CONCLUSION

The Hearing Officer having reviewed the evidence and the Order of Remand, and good cause appearing, IT IS HEREBY ORDERED THAT:

Paragraph VI. 4. d. is amended as follows:

\$3,335.00 for the overdue painting of Petitioner's unit #8 from *April* 2015 through January 2019 at the rate of 5% of monthly lawful rent of \$1,450.00 (\$72.50) per month, and continuing each month thereafter commencing February 1, 2019 until Petitioner's unit #8 is repainted in its entirety.

Dated: April 16, 2019


E. Alexandra DeLateur, Hearing Officer

CITY OF MOUNTAIN VIEW

SUMMARY OF DECISIONS AFTER APPEAL AND REMAND

PURSUANT TO THE COMMUNITY STABILIZATION AND FAIR RENT ACT

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|--|---|
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| Address and Units of the Rental Property: | 857 Park Dr. #8 |
| Petitioner Tenant Name(s): | Annemarie Wilson (Unit #8) |
| Respondent Landlord Names(s): | Linda Curtis Larry Voytilla |
| Hearing Officer: | E. Alexandra DeLateur |
| Date of Decision: | January 23, 2019 (<i>as part of a consolidated matter with 18190025 and 18190033</i>) |
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The following is a summary of the damages awarded in multiple decisions regarding the above referenced petitions (consolidated petitions 18190025 and 18190026) for 857 Park Drive, Unit #8, but this summary does not substitute for the actual decisions themselves:

I. LAWFUL RENT IS \$1450.00

II. PETITION (A) RHC #18190025

Total due to Tenant: \$ 6,010.00

PAYMENT SCHEDULE

\$ 1,660.00 due from Landlord to Petitioner 30 days after Decision is final

\$ 1,450.00 rent credit March 2019

\$ 1,450.00 rent credit April 2019

\$ 1,450.00 rent credit May 2019

Furthermore, if Landlord received more than \$1,450 for January and/or February 2019 rent, then such overpayment shall be equally divided and applied as rent credit toward rent in June and July 2019.

III. PETITION (B) RHC #18190026

Total due to Tenant: \$6,366.50

PAYMENT SCHEDULE

\$ 6,366.50 due from Landlord to Petitioner 30 days after Decision is final

Additional accruals commencing February 2019:

1. Appeal Element A.2., 5% monthly reduction in rent until unit is painted (\$72.50)
2. Appeal Element A.3., \$30 per month reduction in rent until parking space is made available to the Tenant/Petitioner
3. Appeal Element A.4., 5% monthly reduction in rent until window is repaired (\$72.50)

Ongoing Reductions in Rent:

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|---|-------------------|
| Lawful Rent: | \$ 1,450.00 |
| 5% reduction until bathroom window fixed: | \$ (72.50) |
| 5% reduction until apartment fully painted: | \$ (72.50) |
| <u>\$30 reduction until parking place returned:</u> | <u>\$ (30.00)</u> |
| Adjusted rent if all reductions are applied: | \$ 1,275.00 |