Rental Housing Committee

Tentative Appeal Decision

Petition 2021001

The Rental Housing Committee of the City of Mountain View (the "**RHC**") finds and concludes the following:

I. Summary of Proceedings

On August 20, 2020 the Ananda Church of Self Realization of Palo Alto ("**Petitioner**") filed a petition for downward adjustment of rent based on unlawful rent (Hearing Officer's Exhibit1) related to the property located at 240 Monroe Drive, Mountain View ("**Property**"). The Property is owned by a group of individuals as tenants in common ("**Property Owner**") and is managed by Arminda Fisher of Enlightened Investments, Inc. ("**Respondent** "). Respondent filed a response to the Petition dated August 21, 2020 signed by Arminda Fisher as agent of the owner (Hearing Officer's Exhibit 2). Petitioner amended the August 20, 2020 petition on January 15, 2021 prior to the evidentiary hearing on the petition (Petitioner's Exhibit 18) (the original August Petition with the amended Petition is referred to herein as the "**Petition**").

The Petition requests a rent reduction related to the entire Property rented by Petitioner which consists of 72 individual residential rental units.

On October 12, 2020, the RHC provided notice to Petitioner and Respondent of a prehearing meeting with Hearing Officer Barbara M. Anscher (the "**Hearing Officer**"). A prehearing meeting was held on October 13, 2020 and the Hearing Officer issued a written order and summary of the prehearing conference on October 14, 2020 (Hearing Officer's Exhibit 3). At the prehearing meeting the parties agreed that certain threshold matters regarding whether the CSFRA applies to the Master Lease between the Petitioner and the Property Owner needed to be resolved prior to an evidentiary hearing on the Petition. As part of the prehearing meeting, a schedule for submissions by the Respondent and Petitioner regarding these threshold issues was determined and a hearing on Respondent's motion to dismiss was scheduled for November 20, 2020. The parties also stipulated at the prehearing meeting to waive the deadline set forth in the RHC's regulations regarding timing of the evidentiary hearing and set the date for the evidentiary hearing (see Hearing Officer's Exhibit 3).

On December 10, 2020 a notice of prehearing meeting was served on the Parties and prehearing meeting was held on December 23, 2020. At the December 23, 2020 prehearing meeting, Respondent's attorney questioned whether the Hearing Officer's December 7, 2020 decision was immediately appealable or only appealable after the evidentiary hearing. The Hearing Officer ruled that the December 7, 2020 ruling would be appealable only after the issuance of a final decision in the evidentiary hearing (see Hearing Officer's Exhibit 5).

An evidentiary hearing on the Petition was held on January 28, 2021. After the hearing the Hearing Officer issued an order requesting additional documents and allowing the Parties to

submit closing statements keeping the record open until February 12, 2021. After the Petitioner filed post hearing submissions and the Respondent's objected to the Petitioner's submissions, the Hearing Officer vacated the deadline for submission of closing arguments and ordered a conference with the parties.

On February 12, 2021 the Hearing Officer held a post-hearing conference where the parties presented arguments on whether an additional hearing should be held. The Hearing Officer determined that in the interest of a full and fair hearing, the evidentiary hearing would be re-opened for the limited purpose of presenting evidence on the issues raised by a Declaration submitted by the Petitioner after the first evidentiary hearing. The Hearing Officer issued a post hearing order on February 12, 2021.

An evidentiary hearing was held on March 3, 2021 to address the issues raised by the Declaration submitted by the Petitioner after the first evidentiary hearing. The Hearing Officer issued a post-hearing order setting a March 12, 2021 deadline for the parties to submit closing statements. The record was closed on March 17, 2021.

The Hearing Officer decision dated April 17, 2021 was delivered to the Parties on or about that date.

A timely appeal of the Decision was received from the Respondent on April 28, 2021.

Procedural Posture

CSFRA section 1711(j) states in part that "[a]ny person aggrieved by the decision of the Hearing Officer may appeal to the full Committee for review." Regulation Chapter 5 section H(5)(a) provides that the RHC "shall affirm, reverse, or modify the Decision of the Hearing Officer, or remand the matters raised in the Appeal to a Hearing Officer for further findings of fact and a revised Decision" as applicable to each appealed element of the decision.

II. Summary of Hearing Officer Decision.

The Hearing Officer issued two lengthy decisions on the Petition. The first decision addresses the Respondent's Motion to Dismiss and the second decision addresses the evidentiary issues raised in the Petition regarding rent increases in violation of the CSFRA.

December Decision on Motion to Dismiss.

The Hearing Officer's Decision on the Motion to Dismiss dated December 7, 2020 ("**December Decision**") summarizes the facts regarding the parties' relationship and addresses the Respondent's argument that the CSFRA does not regulate the relationship between the Petitioner and the Property Owners. To summarize, in 1989 the Property Owner entered into a lease, titled Master Lease 240 Monroe Avenue, Mountain View, California with the Petitioner (Hearing Officer's Exhibit 1.A).[1] The Master Lease provided that the Property Owner would lease the

[1] The 1989 Master Lease is with the Fellowship of Inner Communion of Palo Alto. Sometime between 1989 and 2006 the name of the Petitioner changed to Ananda Church of Self-Realization.

Property to the Petitioner for the purpose of creating a religious community in which members of the church would live and specifically recognizes that the Petitioner would sublease residential units to sublessees. Between 1989 when the original Master Lease was entered into and the date of the Petition, the Master Lease was amended several times. The Parties' relationship is now governed by a 2012 Master Lease (Hearing Officer's Exhibit 1.B) as amended regularly (see Hearing Officer's Exhibits 1.C, 1.E, 1.F, 1.G, and 1.H) ("**Master Lease**").

Both the Property Owner's tenancy in common agreement ("**Tenancy in Common Agreement**") (Respondent's Exhibit 5) and the Master Lease reference the Petitioner's and Property Owner's intent that the Property be used for the purposes of establishing, operating, and maintaining a religious community. The Tenancy in Common Agreement references that the Petitioner will lease units at the Property giving priority to church members. The Master Lease references that the Property consists of a 72 multi-unit dwelling and that the Petitioner will acquire and operate dwellings for noncommercial religious purposes.

The Respondent, in its Motion to Dismiss, argues that the CSFRA does not apply to the Master Lease claiming that the relationship between the Property Owner and the Petitioner is an 'arms-length business-to-business relationship". The Respondent takes the position that the Petitioner is a commercial business and cannot be covered by the CSFRA that controls the rental of residential property. The Respondent relies heavily on the fact that Petitioner, as a corporation, does not "reside" in any apartments at the Property, arguing that the CSFRA requires that the tenant reside in the apartment subject to the CSFRA. Respondent further argues that Petitioner is solely responsible for maintaining and leasing the Property under the Master Lease, so the Property Owner and Respondent do not provide any housing services, proving that the Property Owner is not a residential landlord. Respondent finally argues that the Petitioner is not a vulnerable tenant needing protections under the CSFRA, in part because the Petitioner has an approximately 6.5% ownership interest in the Property.

Petitioner argued in opposition to the Motion to Dismiss that the Property is a "Rental Unit" as that term is defined in the CSFRA and that the CSFRA covers all residential rental property unless exempted. Petitioner's argument rests on the CSFRA focusing on how property is used rather than who resides in the property. Petitioner also argues that the Property Owners' rent increases since 2018 were specifically designed to circumvent the CSFRA in an effort to cause the Petitioner to vacate the Property which would result in the subtenants being displaced because of the Petitioner's inability to pay the increased rent, circumventing the purposes of the CSFRA

The Hearing Officer, in the December Decision, considered the Petitioner's and Respondent's arguments and analyzed the CSFRA. The Hearing Officer determined that the Property is subject to the CSFRA, the Property Owner is a Landlord as defined in the CSFRA and that the CSFRA does not require that the tenant reside in the Rental Unit covered by the CSFRA. The Hearing Officer also addressed the Respondent's contention that applying the CSFRA to the Master Lease would effectuate an impairment of contract violating Article 1, §10 of the United States Constitution. The December Decision applies the rubric for determining an unlawful impairment of contract established by both federal and State courts and found that the application of the CSFRA to the Master Lease did not effectuate an unlawful impairment of contract.

Finally, the Hearing Officer reviewed the purposes of the CSFRA, finding that failing to apply to the CSFRA to the Master Lease could result in the displacement of 72 tenants since the Property Owner would be able to impose unlimited rent increases on the Petitioner, but the Petitioner would be prohibited from passing those rent increases on to the subtenants. The result would be that Petitioner would eventually default in payment of rent and would also be unable to continue to maintain the Property. Both of these results are counter to the policy goals of the CSFRA. For all these reasons, the Hearing Officer determined that the CSFRA was applicable to the Property Owner/Respondent, the Master Lease, and the Property.

April Decision on Unlawful Rent Increases.

After holding two evidentiary hearings, the Hearing Officer issued a decision on April 17, 2021 (the "**April Decision**") on the Petitioner's claim that the Property Owner/Respondent had unlawfully increased the rent. The Hearing Officer addressed the following issues in the April Decision:

1. Whether the Petitioner is entitled to a downward reduction of rent because the rent rollback required by the CSFRA as of December 23, 2016 was not implemented.
2. Whether Petitioner is entitled to a downward adjustment of rent because the rent increases in 2017, 2018, and 2019 exceeded the AGA and thus were unlawfully imposed.
3. Whether the Property Owner is entitled to the 2.6% bankable rent increase.
4. Whether all rent increases since January 1, 2017 were unlawful due to the Property Owner's failure to register with the RHC.
5. Whether all rent increases since January 1, 2017 were unlawful due to the Respondent's failure to give notice as required by California law.
6. Whether the prevailing party is entitled to attorney's fees.
7. Whether the Property Owner is entitled to an increase in Base Rent because they were denied a fair rate of return.

The Hearing Officer in the April Decision found that the Respondent did implement an appropriate rollback of the rent in December 2016 in accordance with the CSFRA even though the Respondent did not believe that the CSFRA applied to the Master Lease. Respondent then increased the rent in January 2017 and further increased the rent in September 2017 with the cumulative total of these two rent increases exceeding the maximum annual general adjustment allowed by RHC for 2017 of 3.4%. However, the Hearing Officer concluded that the Property Owner/Respondent complied with the roll back and that the rent increases in 2017 did not exceed the allowed increases by an extreme amount. Additionally, the rent increases in 2017 were implemented by the Respondent upon advice of her attorney that the Master Lease was not subject to the CSFRA. Thus, the Hearing Officer concluded that "it would not be reasonable to annul all rent increases beginning on January 1, 2015."

The Petitioner's raised two other grounds for annulling all rent increase; (1) the Respondent's failure to register with the RHC; and (2) Respondent's failure to provide lawful notice of the rent increases. The Hearing Officer concluded that the Respondent is obligated to register with the RHC as a Landlord with Covered Rental Units, but that obligation did not accrue until March 2021. Although Respondent is not currently in compliance with the CSFRA because of a failure

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to register, that failure does not impact any rent increases that may have been implemented prior to March 2021.

The April Decision also concludes that the failure to provide the statutorily mandated 30-day notices of rent increases does not nullify those rent increases. The Hearing Officer concluded that the Petitioner had effective notice of the rent increases as a result of the "symbiotic relationship between the Petitioner and the Owner" and further found that the CSFRA emphasizes the receipt of actual notice rather than the form such notice takes. For these reasons the Hearing Officer denied the Petitioner's request to roll back all rent increases based on a lack of proper notice.

As discussed in the April Decision, none of the parties introduced evidence at the hearings refuting that the rent increases imposed by Respondent in 2017, 2018 and 2019 were above the lawful amount allowed by the CSFRA. However, there was lengthy testimony and documentary evidence presented by both parties regarding the correct amount of rent paid by the Petitioner because of what is referred to in the April Decision as the December Rent Credits. The Hearing Officer devotes several pages to untangling the evidence presented on this issue to determine exactly how much rent was paid each December for purposes of determining the amount by which the rent paid by Petitioner exceeded the allowed amount under the CSFRA. The April Decision also addresses other rent credits related to Petitioner completing work on behalf of the Property Owner and receiving rent credits for that work. As a result of this detailed analysis of the evidence, the Hearing Officer concluded that Petitioner had been overcharged rent and ordered the Property Owner to refund to the Petitioner $190,229.22.

The Hearing Officer also addressed arguments made by Respondent that Petitioners were estopped or had waived their rights to contest the unlawful rent increase. The Hearing Officer concludes that the CSFRA does not require tenants subjected to an unlawful rent increase to inform the landlord of the illegality of the rent increase within a particular time. Additionally, the CSFRA at Section 1713 specifically prohibits waiver of a tenant's rights. On these grounds, the Hearing Officer dismissed the Respondent's waiver and estoppel arguments.

The Hearing Officer, in the April Decision. also addressed Petitioner's argument that it was entitled to attorneys' fees under the terms of the Master Lease. As the Hearing Officer states in the April Decision, the CSFRA is silent on attorneys' fees as part of the relief that the RHC can grant to tenants who are subjected to unlawful rents.

Respondent argued at the hearing that a finding that the Petitioner was subject to an unlawful rent increase would result in the Property Owner not earning a fair rate of return and that the Property Owner is entitled to a rent increase. The April Decision concludes that the Respondent presented no evidence to support any contention that the Property Owner would be prevented from receiving a fair rate of return nor did the Property Owner file a petition for an upward adjustment which would be allowed if the Property Owner demonstrated that it was not maintaining its net operating income.

Finally, the Respondent argued that the Property Owner was entitled to the one-time 2.6% bankable increase allowed by the RHC for 2016. In enacting the 2.6% increase, the RHC

imposed certain conditions for Property Owners to take advantage of the one-time increase, including a requirement that the tenants were not subject to a rent increase between October 19, 2015 and December 23, 2016. Neither party disputed that the Respondent imposed a rent increase on September 1, 2016, thus making the Property Owner ineligible for the 2.6% increase.

III. Appealed Elements of Hearing Officer Decision

Regulation Chapter 5 section H(1)(a) states that "[t]he appealing party must state each claim that he or she is appealing, and the legal basis for such claim, on the Appeal request form." Section III of this Appeal Decision identifies the elements of the Decision that are subject to appeal by the Respondent. The Appeal Decision regarding each appealed element is provided in Section IV of this Appeal Decision.

The Respondent raises 12 issues in the Appeal all of which were raised as part of the hearing or addressed by the Hearing Officer in her orders or Decisions.

A. Respondent Appeal Elements

1. Due Process Requires that the Owners be Parties to the Proceedings, not Enlightened Investments, a Property Management Company.

Respondent argues that the Property Owner was not properly served with the Petition by the Petitioner.

2. The Property is not a Rental Unit subject to the Act.

Respondent argues that the Petitioner does not rent a Rental Unit but rather an entire property for the dual purposes of renting apartments and creating a religious community in a business to business relationship.

3. The Master Lease does not call for the Payment of Rent Subject to the Act.

Respondent argues that the CSFRA's definition of Rent does not encompass the payments made by Petitioner to the Property Owner under the Master Lease because the payments do not concern a Rental Unit and the Property Owner does not provide Housing Services.

4. The Master Lease is not a "Rental Housing Agreement" subject to the Act.

According to Respondent, the Master Lease does not meet the definition of a Rental Agreement under the CSFRA because it is not for the Petitioner's residential occupancy but rather for the purposes of Petitioner renting out apartments to the public as it attempts to establish a religious community.

5. **The Church is not a "Tenant" protected by the Act**.

Because the Petitioner is a business, according to the Respondent, and does not "reside" in the Property, the Petitioner is not a tenant under the CSFRA.

6. **Neither Enlightened Investments nor any of the Owners is a "Landlord" under the Act.**

Because the Master Lease is not for the use and occupancy of a Rental Unit but rather for the Petitioner's use of creating a religious community, the Respondent argues that neither the Property Owner, nor its agent, Enlightened Investments, is a Landlord under the CSFRA.

7. **Neither Enlightened Investments nor any of the Owners Provide "Housing Services" to the Church or to the residents of the Ananda Community.**

Respondent argues that because the Petitioner, under the terms of the Master Lease, is solely responsible for the operation of the rental units, the Property Owner, and its agent, Enlightened Investments, do not provide Housing Services as that term is defined in the CSFRA.

8. **The Church asserts it has a legal or equitable right to continue to use the Property.**

The Respondent argues that since the Petitioner has argued that is has third party beneficiary rights under the Property Owner's Tenancy in Common Agreement it cannot be both a residential tenant protected by the CSFRA and have a legal/equitable right to occupy the Property forever.

9. **Petitioner has waived and/or is estopped from requesting a rent reduction.**

Respondent argues that the evidence in the record establishes that the Petitioner has waived and is estopped from contending that the rent increases were improper.

10. **Respondent was not obligated to register the Property as it has already been registered.**

Respondent raises two arguments related to the registration of the property. First, that Petitioner is estopped from raising this argument because Petitioner and Respondent had numerous discussions regarding compliance with the CSFRA and never did the Petitioner assert that the Respondent is required to register the Property. The Respondent's second argument is that the Property has been registered by the Petitioner and the CSFRA does not require that the Property be registered twice.

11. **Respondent is entitled to at 2.6% Bankable Increase as it was in substantial compliance with the CSFRA.**

Respondent asserts without any further information that the evidence shows that the Property Owner was in substantial compliance with the CSFRA so is entitled to the 2.6% one-time rent increase.

12. **Respondent is entitled to claim an increase in the Base Rent as an Offset**.

Respondent argues that any rent decrease should be offset by a rent increase in order for the Property Owner to maintain a fair rate of return, citing to evidence in the record that the Tenancy in Common Agreement specifically states that the Master Lease results in the Property not being used for its highest and best valuation.

IV. Decision Regarding Appealed Elements

A. Respondent's Due Process Claim.

Respondent alleges that the Property Owner must be the party to the Petition for the RHC to exercise its jurisdiction. Respondent made this same argument to the Hearing Officer at the prehearing conference, arguing that the Property Manager, Enlightened Investments, was not authorized to represent the Property Owner. In its appeal, Respondent cites to an inapposite case related to a declaration of service of process that clearly was either false or served on the wrong party (*American Express Centurion Bank v. Zara* (2011) 199 CA 4th 383). Here there is no evidence in the record that Arminda Fisher did not receive service of the Petition, nor is there any contention that Ms. Fisher is not the property manager. In fact, Ms. Fisher responded to the Petition identifying herself as the agent for the owner. As noted in the Hearing Officer's Order after the October 13, 2020 prehearing conference (Hearing Officer's Exhibit 3) Ms. Fisher, as the Property Owner's agent signed the Master Lease and is designated as the person to receive notice on behalf of the Property Owner under the Master Lease (Hearing Officer's Exhibit 1.B). Petitioner served the Petition on Respondent as required under the terms of the Master Lease. As the Property Owner's designated agent, it was incumbent on Ms. Fisher to inform the Property Owner of the Petition, which she apparently did since at least one of the Property Owners, Nancy Kendall, attended the March 3, 2021 hearing[2].

Civil Code Section 416.90 provides that a summons and complaint can be served on one who is authorized to receive service. Although the Petition does not constitute a summons and complaint, it is clear that Ms. Fisher was authorized to receive service on behalf of the Property Owner and there is no dispute that she did receive proper service of the Petition.

B. Does the CSFRA Apply to the Master Lease?

Respondent's appeal issues 2 through 7 all are focused on Respondent's argument that the Master Lease is not covered by the CSFRA. According to Respondent, the Property is not a Rental Unit as defined in the CSFRA, the Master Lease does not call for the payment of Rent as defined in the CSFRA, the Master Lease is not a Rental Housing Agreement as defined in the CSFRA, the

[2] It should be noted that Ms. Fisher testified that Ms. Kendall, one of the Property Owners, is her mother.

Petitioner is not a Tenant as defined in the CSFRA, neither the Property Owner nor the Respondent are Landlords under the CSFRA, and the Property Owner does not provide Housing Services. The central element of Respondent's argument is that because the Petitioner does not use and occupy a Rental Unit, the Property is not covered by the CSFRA. Respondent also relies upon the fact that Petitioner provides Housing Services to make the argument that the Property Owner does not provide Housing Services.

Respondent's contentions on appeal do not differ from Respondent's arguments made to the Hearing Officer at the November 20, 2020 hearing on Respondent's Motion to Dismiss, all of which were satisfactorily addressed in the December Decision.

As noted in the December Decision, whether the Property is covered by the CSFRA must start with the definition of a Rental Unit in the CSFRA. CSFRA §1702(s) defines a "Rental Unit" as

> Any building, structure, or part thereof or land appurtenant thereto, or any other rental property rented or offered for rent for residential purposes, together with all Housing Services connected with use or occupancy of such property, such as common areas and recreational facilities held out for use by the Tenant.

All Rental Units are Covered Rental Units under the CSFRA unless the Rental Units are explicitly exempted from the CSFRA pursuant to §1703. Neither Respondent nor the Property Owner has argued or presented any evidence that the Property falls within one of the exemptions listed in §1703.

The definition of Rental Unit in the CSFRA is broad and only requires that the property be used for residential purposes. The Property is clearly being used for residential purposes. Both parties have submitted evidence that the Property consists of 72 dwelling units (See Master Lease, Hearing Officer's Exhibit 1.B and Tenancy in Common Agreement, Respondent's Exhibit 5). Rather, Respondent's argument that the Property does not constitute a Rental Unit rests on the argument that the Petitioner, a corporate entity, does not "reside" in the Rental Units. However, the definition of Rental Unit does not require that the tenant reside in the Property but rather "use" the Property.

Respondent further contends that Petitioner is not a "Tenant" as defined in the CSFRA. § 1702(u) of the CSFRA defines Tenant to be "A Tenant, subtenant, lessee, sublessee or any other person entitled under the terms of the Rental Housing Agreement or this Article to use or occupancy of any Rental Unit." Once again, Respondent argues that the Tenant does not occupy or reside in the Rental Unit so it cannot be a Tenant as defined in the CSFRA. However, as the Hearing Officer points out, use or occupancy are not synonymous with "reside." Petitioner is able to use and occupy the Property under the terms of the Master Lease. To quote from the December Decision:

> … the definition of "occupancy" simply is "taking possession of property and use of the same." Black's Law Dictionary, 973 (5th Edition, 1979). Possession is defined in part as "[t]hat condition of facts under which one can exercise his power over a corporeal thing at his pleasure to the exclusion of all other persons." Black's Law Dictionary, supra, 1047. Possession is about having rights to something, not about the way in which one exercises

> those rights. Thus, possession of a residential property does not require that one reside in it, only that one has the right to use as above all others. In entering into the Master Lease, Landlord gave the Church the right to both use and occupy the Property for its purpose of subleasing the apartments thereon to subtenants. Thus, the Church qualifies as a Tenant under the CSFRA. [footnote omitted]

As stated in the December Decision, the CSFRA definition of Rental Housing Agreement is consistent with the definition of Tenant and uses the terms use or occupancy as well.

The CSFRA definition of Rental Housing Agreement, located at §1702(q) also references Housing Services and Respondent reiterates its argument from its Motion to Dismiss that the Property Owner does not provide Housing Services as defined in the CSFRA so is not regulated by the CSFRA. Nothing in the CSFRA requires a Landlord to provide Housing Services for a Rental Unit to be covered by the CSFRA. Rather Housing Services are a potential part of the bundle of goods that are provided to the Tenant along with the use or occupancy of the Rental Unit. The purpose of including Housing Services in the definitions of Rental Housing Agreements, Rent, and Rental Unit is to ensure that the provision of those Housing Services is not separate from the Rent or Rental Unit and thus unregulated, an outcome that would allow Landlords to charge for Housing Services separately and evade the protections of a rent stabilization program. It should also be noted that, as the April Decision points out, the Property Owner does provide Housing Services as the Master Lease required the Property Owner to maintain certain portions of the Property.

Finally, Respondent alleges that the Property Owner and the Respondent are not Landlords as defined in the CSFRA. Respondent's argument rests on Respondent's contention that the Property is not a Rental Unit so the Property Owner and the Respondents do not receive payments for use and occupancy of a Rental Unit. As discussed in the December Decision and above, the Property falls within the definition of Rental Unit. Since Respondent's argument on this point raises nothing new regarding the contention that the Property is not a Rental Unit there is no need to further address this issue.

As the Hearing Officer ably points out in the December Decision, in addition to the fact that the relationship between the Property Owner/Respondent and the Petitioner clearly falls within the definitions in the CSFRA, it is also important to look to the policy purposes of the CSFRA. The CSFRA was adopted to address the impact of excessive rent increases on tenants in order to address the negative impacts of such rent increases including displacement, the inability for tenants to find decent, safe and healthy housing and the threat to public health, safety and welfare resulting from displacement.

If the CSFRA were found to not apply to the Master Lease, the Property Owner and Respondent would be able to raise Petitioner's rent by any amount, but Petitioner would not be allowed to raise the rents on the subtenants. The result would be that the Petitioner would eventually be in default under the Master Lease resulting in Petitioner's eviction. Since Petitioner's subtenants' rights flow from the Petitioner, the result would be the displacement of 72 households although those households would not be in default under their rental agreements. Clearly this scenario defeats the purposes of the CSFRA. Additionally, if Property Owner and Respondent were to prevail on their position, there would be nothing that would prevent other property owners from entering into

arrangements similar to the Master Lease with either related or unrelated third parties in an effort to circumvent the constraints of the CSFRA, putting at risk the housing stability of potentially thousands of tenants.

C. Does the Petitioner's Legal or Equitable Interest in the Property Prevent the Petitioner from receiving the protections of the CSFRA?

Respondent argues that the Petitioner, which owns a 6.5% interest in the Property Owner and which also claims to have an equitable interest in the Property, cannot both be a residential tenant under the CSFRA and have a legal or equitable interest in the Property. This issue was also addressed in the December Decision and Respondent does not raise any new arguments or refutation to the Hearing Officer's April Decision to support Respondent's appeal. As discussed in the December Decision, there is nothing in the CSFRA that prevents a tenant from having a legal or equitable interest in the property subject to the CSFRA or that disqualifies a Rental Unit from the protections of the CSFRA if the tenant were to have an interest in the property. Obviously if there was a complete alignment between the Property Owner and the Petitioner, there would be no need for the Petitioner to have proceeded with the Petition. However, Petitioner's limited and insignificant ownership interest in the Property does not grant Petitioner a level of control that would allow Petitioner to avoid the rent increases that are the subject of the Petition.

D. Has the Petitioner Waived and/or is the Petitioner estopped from requesting a rent reduction?

Respondent argues that Petitioner has waived its rights to request a rent reduction citing to two cases for its position. Respondent raised these same issues as part of the Hearing and the Hearing Officer disposed of those issues in the April Decision at pages 21 and 22. The Hearing Officer concluded that since the CSFRA explicitly prohibits waiver of a tenant's rights at § 1713 as a matter of public policy, it would be counter to the CSFRA to find that a tenant who failed to alert a landlord that a rent increase was unlawful within a certain period of time is estopped from filing a petition or requesting relief from an unlawful rent increase.

Respondent's citation to case law in their appeal does not bolster their waiver/estoppel argument and in fact does just the opposite. Respondent cites to *Lantzy v Centex Homes* (2003) 31 Cal. 4th 363 for the position that it is enough to create an equitable estoppel if a party has been induced to refrain from using such means or taking such action as lay in his power, by which he might have retrieved his position and saved himself. Although Respondent quotes accurately from the *Lantzy* case, the quote is not a complete explication of the case holding, which found that there was no equitable estoppel that would toll a statute of limitations even though the defendant in the case had assured the plaintiff that it would make the requested repairs. However, more importantly, the Court in the case made clear that the concept of equitable estoppel comes in to play "only after the limitations period has run and addresses the circumstances in which a party will be estopped from asserting the statute of limitations as a defense to an admittedly untimely action because his conduct has induced another into forbearing suit within the applicable limitations period". *Supra* at 384. The Court goes on to state that "[Equitable estoppel] … takes its life from the equitable principle that no man [may] profit from his own wrongdoing in a court of justice." *Id.* [internal citations omitted].

Nowhere in the voluminous record of this case or at the hearing itself has Respondent or Petitioner raised any issues claiming that the statute of limitations has run in this case, a precursor for there to be an equitable estoppel defense. Additionally, although Respondent asserts in the appeal that the evidence demonstrates that Petitioner has waived and is estopped, Respondent does not cite to any specific evidence that the Petitioner has committed any wrongdoing. Rather the Petitioner paid the rent demanded by the Property Owner and the Respondent to ensure that they and their subtenants did not become subject to an eviction. Complying with the demands of the landlord by paying the rent does not constitute wrongdoing.

Respondent also argues that Petitioner waived it rights, citing to *Brookview Condominium Owners' Assn. v. Heltzer Enterprises-Brookview* (1990) 218 Cal. App. 3d 502, 513. The *Brookview* court did not find any waiver stating that "The waiver of a legal right cannot be established without a clear showing of intent to give up such right. The burden is on the party claiming the waiver 'to prove it by evidence that does not leave the matter doubtful or uncertain and the burden must be satisfied by clear and convincing evidence that does not leave the matter to speculation.'" *Supra* at 513 [internal citations omitted]. Respondent has not cited to any clear and convincing evidence in the record that Petitioner intended to give up its rights.

E. Was Respondent Obligated to Register the Property since it had already been registered?

Respondent in its appeal argues both that the Petitioner is estopped from claiming that Respondent is required to register the Property based on the discussions that were held between Respondent and Petitioner on this issue and that the Property is registered and there is no requirement in the CSFRA for a property to be registered twice. It should be noted that Respondent's failure to register the Property had no impact on the Hearing Officer's decision since the failure to register the Property only became a substantial violation of the CSFRA in March of 2021, after all of the rent increases that were the subject of the Hearing Officer's decision were imposed. As the Hearing Officer determined, the Chapter 11 regulations requiring registration are not retroactive.

Respondent has failed to provide any evidence to support its estoppel argument instead referring to emails between the Petitioner and Respondent from 2016, four years prior to the registration requirement being implemented.

With respect to Respondent's argument that the CSFRA does not require the Property to be registered twice, the Hearing Officer addressed this claim in the April Decision. The Hearing Officer concluded that because the regulations on registration require Landlords to register (See Chapter 11, Section B.1) and the Hearing Officer previously concluded that the Respondent is a Landlord as defined in Section 1702(j) of the CSFRA in the December Decision, Respondent was also required to register the Property. The dual registration of the Property furthers the goals of the RHC in imposing the registration requirement to create a database of Covered Rental Units in order to efficiently communicate with landlords and to collect rental data. Respondent's registration of the Property will further this purpose and provide the RHC with the information that it needs to communicate with Respondent regarding the CSFRA and its implementation.

F. Is Respondent entitled to the 2.6% Bankable Increase because Respondent was in substantial compliance with the CSFRA?

Respondent argues that because the Property Owner was in substantial compliance with the CSFRA, it should be entitled to the 2.6% bankable rent increase. However, Respondent was not denied the 2.6% bankable rent increase because of lack of substantial compliance with the CSFRA, but rather because they did not meet the explicit requirements for receiving the 2.6% increase. In particular, Property Owner and Respondent imposed a rent increase on September 1, 2016. The RHC resolution approving the 2.6% increase explicitly prohibits landlords from taking advantage of the 2.6% increase if the landlord imposed a rent increase between October 19, 2015 and December 23, 2016 (See RHC Resolution No. 18). Respondent provides no evidence to refute that a rent increase was imposed on September 1, 2016.

G. Is Respondent entitled to claim an increase in the Base Rent as an offset?

Respondent argues that the Tenancy in Common Agreement recognizes that the Property Owner was not leasing the Property to the Petitioner for its highest and best use and to maximize profits. Based on the Tenancy in Common Agreement language, Respondent argues that it should be entitled to claim an offset from the rent reductions to increase the Base Rent in order to realize a fair rate of return. Respondent proposes that the Base Rent for the Property should be set at the October 2015 rent that Petitioner charged to the subtenants and that the Property Owner should be entitled to the annual general adjustments from that point forward. Because the Property Owner has not charged that amount in rent, Respondent argues that Petitioner's claim of unlawful rent should fail. It should be noted that this is the only portion of the appeal that directly addresses the unlawful rent increases and the Hearing Officer's determination of the amount of rent overcharged to the Petitioner. Nowhere else does the Respondent address the rent increases that were determined to be unlawful, the Hearing Officer's calculation of the actual of amount of rent paid by the Petitioner including the determination of the impact of the rent credits on the rents paid or the amount of the overcharged rent.

Respondent's claims that it is not maintaining a fair rate of return are not supported by any evidence in the record. Respondent has provided no financial information regarding the Property or its operating costs and expenses other than emails between the Respondent and the Property Owner setting forth the annual distributions to the Property Owner. Additionally, as stated in the April Decision, the Respondent's remedy for failure to maintain a fair rate of return is to file a complete petition for an upward adjustment. Should Respondent be successful in that petition, Respondent may be entitled to an increase in the rent going forward. However, it is only through that petition process that the RHC can grant a rent increase.

V. Conclusion

As detailed above, the RHC denies the appeal in its entirety and affirms in their entirety both the December Decision and the April Decision.