Rental Housing Committee
Tentative Appeal Decision

Petition Nos. C23240003 and C23240004

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

I. Summary of Proceedings

On August 25, 2023, Tenant Delma Maciel (**"Petitioner**") filed two petitions for downward adjustment of rent (the "**Petitions**") (Petitioner's Exh. #1 and #3) related to the property located 2120 W. Middlefield Road, Unit [redacted], Mountain View ("**Property**"). The Property is owned by TayCon Properties, which was represented in the proceedings by Ella Levin ("**Respondent**"). Petitioner and Respondent are collectively referred to herein as the "**Parties**." On September 26, 2023, a notice of hearing was issued with a hearing date scheduled for November 8, 2023.

The first Petition requested a downward adjustment of rent on the basis that (1) there was an error in the calculation of the Base Rent due to a concession in the lease, (2) the 2021 Annual General Adjustment (AGA) was improperly imposed, (3) Respondent began charging Petitioner for Utility Charges more than a year after Petitioner moved in, and (4) Respondent began charging Petition for renters' insurance. The second Petition request a downward adjustment of rent on the basis that Respondent had (1) failed to maintain the property in a habitable condition based on reglazing peeling off the sink, shower and bathtub, a leaking sink faucet and toilet, and overflowing of trash attracting vermin, and (2) improperly reduced Housing Services based on trash bin blocking Petitioner's assigned parking spot, the condition and unavailability of the laundry room, the unavailability/closure of the pool due to a broken gate, and a tenant portal for reporting maintenance issues that did not allow for communication between the property managers and tenants after the initial request.

On October 18, 2023, a pre-hearing conference was conducted by the Hearing Officer via Zoom. Petitioner and Respondent (through its authorized representative Ms. Levin) were present on the call. Hearing Officer and the Parties discussed the administrative procedure that would be followed at the hearing. A Notice of Hearing Officer's Written Order and Summary of Pre-Hearing Conference and Notice of the Hearing were served on the Parties on October 19, 2023. (Hearing Officer's Exh. #5).

The hearing was held on November 8, 2023. The hearing record was held open until the close of business on November 20, 2023 for submission of additional evidence requested by the Hearing Officer. The Hearing Officer issued a decision on February 15, 2024 ("**HO Decision**"). The Hearing Officer's Decision was served on the parties on February 15, 2024.

A timely appeal of the Decision was received from the Respondent on March 1, 2024 ("**Appeal**").

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 a detailed decision on the Petition summarizing the evidence and making findings of fact and conclusions of law.

The Hearing Officer found the following:

1. Petitioner met her burden of proof that Respondent had unlawfully demanded and retained rent in excess of the amount permitted by the CSFRA because they failed to consider ten (10) months of concessions in their calculation of Petitioner's Base Rent. Based on the definition of Base Rent in CSFRA Regulations, Chapter 2, section (b), the Petitioner's Base Rent should have been determined by adding all of the rents actually paid by Petitioner in the first twelve (12) months of her tenancy – two (2) months of $2,695.00 and ten (10) months of $2,291.00 – and then dividing the sum ($28,300.00) by twelve (12) for a Base Rent of $2,358.33.

2. Petitioner also met her burden of proof that Respondent was responsible for unlawful retention of rent in excess of the amount permitted by the CSFRA because the Notice of Rent Increase effective August 1, 2022 was invalid. In that notice, Respondent imposed the 2021 AGA of two percent (2%) on the incorrect Base Rent of $2,695.00. Based on the foregoing, Petitioner was entitled to a rent refund of $4,686.84 for the 12-month period from September 2022 through August 2023, a rent refund of $1,171.71 for the 3-month period after she filed her petition, and a rent refund for any months after December 2023 for which she pays more than the lawful Base Rent of $2,358.33.

3. Petitioner further met her burden of proof that Respondent was responsible for unlawful retention of rent in excess of the amount permitted by the CSFRA because Respondent improperly changed the terms of the Lease regarding Utility Charges beginning October 2022. Therefore, Petitioner was entitled to a rent refund of $956.63 for the period from October 2022 through the date of the hearing as well as refund of any Utilities Charges paid through the date that the HO Decision became final. Petitioner was entitled to an additional $300 refund of late fees charged due to unpaid Utility Charges that were determined to be unlawful in this petition.

4. Petitioner did not meet her burden of proof that Respondent had unlawfully demanded and retained rent in excess of the amount permitted by the CSFRA by charging Petitioner for renters' insurance. The evidence demonstrated that the charges were based on breakdowns in communications that were the fault of both parties. Petitioner was not entitled to any rent refund for the renters' insurance charges, but Respondent was ordered to stop charging Petitioner for renters' insurance as soon as Petitioner provided proof of the required insurance coverage.

5. Petitioner met her burden of proof that beginning in January 2023, Respondent had failed to maintain the Property in a habitable condition because of the condition of the bathtub, shower, and sinks in the Property. Specifically, Petitioner was not required to allow Respondent an opportunity to repeat the same treatment/maintenance that had already been previously attempted but had failed to adequately resolve the glazing issue. As a result, Petitioner was entitled to a rent refund of

$100 per month, or $1,200 total, for the period from January 2023 through December 2023 as well as an ongoing rent reduction of $100 per month until the issue was adequately addressed by Respondent.

6. Petitioner met her burden of proof that Respondent had failed to maintain the Property in a habitable condition due to a sink spigot and toilet water that were constantly running in one of the bathrooms at the Property. Petitioner demonstrated that she had informed Respondent of the issue, but that Respondent's agent (the plumber) informed her that the toilet and fixtures were old and needed to be replaced. Petitioner was entitled to a rent refund of $25 per month, or $200 total, for the period from May 1, 2023 through December 2023, as well as an ongoing rent reduction of $25 per month until the sink and toilet were repaired.

7. Petitioner was also entitled to a $400 credit for the plumber charge that Respondent added to her account. Petitioner met her burden to show that she had not caused the problem and therefore was not responsible for the bill under the terms of her lease. In addition, Petitioner should be reimbursed $25.00 for the "nonsufficient funds" fee that she incurred due to insufficient funds in her account from being charged her July 2022 rent and the $850 plumbing charge without her knowledge.

8. Petitioner met her burden of proof that there was a reduction in housing services due to Respondent's inability to always provide her with access to her assigned parking spot. Respondent's waste management company required the dumpsters to be rolled out as a condition for its servicing the complex. As a result, Petitioner's parking spot was regularly blocked by the dumpsters. Petitioner was entitled to a $100 per month rent refund, or a total of $3,500, for the period 35-month period from February 1, 2021 through December 2023, as well as an ongoing rent reduction of $100 per month until proper access to her assigned parking spot was restored.

9. Petitioner met her burden of proof that Respondent improperly decreased Housing Services due to the condition of the laundry room. Both Petitioner and her witness, [redacted], testified that the condition of the laundry room was unsanitary, and that the machines were or had been broken on numerous occasions. As such, Petitioner was entitled to a rent refund of $50 per month, or $950 total, for the period from June 1, 2022 through December 2023, along with an ongoing $50 per month rent reduction until fully accessible, clean and safe laundry facilities were provided to the tenants.

10. Petitioner did not meet their burden of proof that they experienced a further decrease in housing services because of the pool closure(s). The pool closures were not unreasonable in light of the cause of the closures (i.e., an order from the City of Mountain View requiring that the pool remain closed until the fence/gate was fixed) and the time that it took Respondent to remedy the issue.

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 the following seven issues on appeal:

A. **The Hearing Officer erred or abused her discretion by concluding that Respondent did not address the glazing issue**. Respondent argues that they sent two contractors to address this issue, but that Petitioner and Petitioner's daughter turned those contractors away. Respondent alleges that they offered to accommodate Petitioner in a hotel while their contractors were working, but that Petitioner declined this offer.

B. **The Hearing Officer erred or abused her discretion by finding that the overflowing of trash in the dumpsters was an issue.** Respondent states that they have resolved this problem by hiring a new waste management company that ensures trash is promptly and adequately disposed of twice a week; there have been no complaints since the new company took over.

C. **The Hearing Officer erred or abused her discretion by finding there was a reduction in Housing Services due to the Petitioner's parking spot being blocked by dumpster.** Respondent argues that this issue did not persist throughout Petitioner's entire tenancy and was only reported to Respondent by Petitioner on a handful of occasions. Additionally, Petitioner asserts that they were took proactive steps to address the issue by hiring a new waste management company.

D. **The Hearing Officer erred or abused her discretion in concluding that Respondent was required to reimburse Petitioner for the remaining balance of the plumbing bill.** Respondent contends that their plumber informed them that the toilet damage and clogging were caused by improperly disposed wipes and feminine hygiene products; therefore, the toilet clog was a tenant-caused issue for which the Petitioner was responsible per the terms of the lease. Further, Respondent states that Petitioner and its representative, Ms. Levin, reached an agreement that Petitioner would be responsible for $400 of the $800 bill and accordingly, a $400 credit was applied to Petitioner's account.

E. **The Hearing Officer erred or abused her discretion in determining that the Respondent had to reimburse Petitioner for the closure of the pool.** Respondent argues that the pool was closed twice during Petitioner's tenure because of construction activities in the adjacent property that resulted in damage to the fence and gate around the pool. Both times, Respondent states, they took action to promptly make repairs to the fence and/or the gate. Further, Respondent alleges that Petitioner never complained to them about the pool closures.

F. **The Hearing Officer erred or abused her discretion in reaching the conclusion that Respondent failed to adequately address the condition or availability of the laundry rooms.** Respondent contends that there have been two incidents of break-ins at the laundry room, both of which were promptly addressed. They also alleged that they replaced one set of broken machines with a new set and repaired the coin machine for the other set. Respondent alleges that they have not seen any observable decrease in income from the laundry machines, indicating continued usage by the tenants, and that, in fact, two members of their maintenance team observed Petitioner using the laundry. Lastly, they allege that Petitioner never reported any issues regarding the laundry room to them.

G. **The Hearing Officer erred or abused her discretion in concluding the CSFRA Regulations regarding rent concessions were applicable in the instant case.** Respondent alleges that the regulations making the use of concessions "illegal" did not go into effect until the summer of 2022, more than a year after Petitioner signed her lease. Respondent further states that they "were unable to locate any documentation from the city of MV mandating retroactive adjustments to concessions."

Respondent's Appeal addresses several other issues relating to the handling of the petition process by the Hearing Officer and by Rent Stabilization Department staff. Respondent's Appeal also raises an issue related to access to the Property by the Petitioner. These issues are not discussed in this decision as they do not constitute appealed elements of the HO Decision, and as such, an appeal hearing is not the appropriate forum to address these issues.

IV. Decision Regarding Appealed Elements

A. Hearing Officer Did Not Err or Abuse Her Discretion by Determining that Respondent Did Not Adequately Address the Glazing Issue.

The Hearing Officer did not err or abuse her discretion by concluding that the Respondent did not adequately address the deteriorating glazing on the bathtub, shower, and sinks in the Property. Specifically, there is sufficient evidence in the record to support the Hearing Officer's conclusion that the Petitioner was not required to permit Respondent to repeat the same treatment/maintenance that had already been previously attempted but had failed to adequately resolve the glazing issue.

In the Hearing Officer Decision, the Hearing Officer explained the evidence presented demonstrated that "the condition of the bathtub, shower and sinks is poor." (HO Decision at pg. 13.) This conclusion was supported by photographic evidence submitted by Petitioner as well as testimony from both Petitioner and Petitioner's daughter. (HO Decision at pg. 5; *see also* Petitioner's Exh. 9-A.) Further, the condition of the bathtub, shower and sinks were not contested by Respondent or their witnesses. Respondent also did not contest that they knew about the issue, or that Petitioner had informed them of the issue. Then and now, Respondent's only argument that they should not have to reimburse Petitioner for glazing issue is that Petitioner refused to grant access to Respondent's contractor. Respondent states:

> "TayCon would have promptly addressed the reglazing issue if Petitioner had granted us access to repair it….We made efforts to send two separate contractors to access the unit, but entry was denied by either [Petitioner] or her daughter (2nd Violation of her lease). After two contractors were turned away, we contacted Petitioner regarding the denial of entry to the contractors, she cited distrust and concerns about the chemicals being used. We offered to accommodate her in a hotel, which she also declined." (See Appeal Brief § A(1).)

For one, the evidence in the record regarding Respondent's attempts to address the glazing issue is inconsistent at best. On the one hand, Respondent's representative, Ms. Levin, testified that the contractor who was sent to the Property intended to do an inspection to determine whether reglazing or replacement was more appropriate, and that the contractor would have thereafter informed management if it were necessary to accommodate the tenants in a hotel while the repairs were being completed. (Hearing Officer Recording at 01:11:25-01:14:45.) Thereafter, Respondent's agent, Ms. Albert, testified in contradiction to Ms. Levin that they wanted Petitioner to give the reglazing another chance since they had a new, better vendor who could do the reglazing. (Hearing Officer Recording at 01:32:05-01:32:48.) The text messages between Respondent and Petitioner similarly contradict Ms. Levin's testimony. For instance, in one text, Petitioner states that she does not think reglazing is the solution, and Respondent replies "It is the solution. The quality of the reglazing and the finishing beneath determine the length of time it lasts." (Respondent's Exh. #1.) Later, Respondent states "I understand you want a replacement but the new vendor doe's [sic] quality work and is highly reputable." (*Id.*) Based on the

foregoing, it was reasonable for the Hearing Officer to conclude that Respondent sought to address the issue by reglazing, not repairing, the bathtub and sinks.

In the Hearing Officer Decision, the Hearing Officer considered these same arguments about Respondent's reglazing efforts and determined that Petitioner was not required to grant the Respondent access to retry the same repairs. The Hearing Officer's interpretation is supported by law. Civil Code Section 1954(a), which deals with landlord's right to access a rental unit, states that "[a] landlord may enter the dwelling unit only….[t]o make necessary or agreed repairs…." In this case, Petitioner did not agree to the reglazing, and Respondent has not demonstrated that reglazing was the "necessary" repair. In fact, the evidence in the record – namely the fact that the glazing issue had returned after that Petitioner's shower, bathtub and sinks have been reglazed twice previously – reasonably indicates that reglazing was not the "necessary" repair in this instance.

Based on the foregoing, there is sufficient evidence in the record to support the Hearing Officer's determination that Respondent failed to adequately address the deteriorating condition of the shower, bathtub and sinks because Respondent only offered to reglaze these fixtures.

B. Hearing Officer Did Not Award Petitioner Any Rent Refund or Reduction Based on the Trash Overflow Issue.

Respondent's Appeal summarizes their efforts to address the trash bin/dumpster issues. Specifically, Respondent provides that "[t]o mitigate issues with the bin/dumpster, we took proactive measures by hiring a new waste management company, ensuring trash is promptly disposed of twice a week…We have not had any complaints since the new company took over." They further allege that numerous inspections conducted by the City, none of which raised concerns related to trash.

It is unclear why Respondent restates these arguments in their Appeal as the Hearing Officer (1) determined at the time of the hearing that the "parties agree there has been some improvement regarding" the trash overflow issue (HO Decision at pg. 15); and (2) did not award any rent reduction or refund to Petitioner based on the condition of the dumpsters or surrounding areas. (HO Decision at pg. 19). As such, this decision does not address the arguments under Section A.2 of the Appeal Brief.

C. Hearing Officer Did Not Err or Abuse Her Discretion in Concluding that There Was a Reduction in Housing Services Based on Blocked Parking.

The Hearing Officer did not err or abuse her discretion in concluding that there was a reduction in Housing Services based on the dumpsters regularly blocking Respondent's access to her assigned parking spot.

In reaching her conclusion, the Hearing Officer explained, "Petitioner's right to park in her assigned parking spot on the property is fundamental to her tenancy. If a contract includes parking in the rent charged, it must be accessible and may not be removed or made unusable or there is a reduction in housing services. *CSFRA Regulations, Chapter 2(h).*" (HO Decision at pg. 15.) CSFRA Section 1710(d) provides that a tenant may file a downward adjustment of rent petition based on a decrease in Housing Services. Housing Services, as defined in the CSFRA and the Regulations, include parking. (CSFRA § 1702; CSFRA Regulations, ch. 2, § h.) Therefore, there was no error in the Hearing Officer's application of the law.

Nonetheless, Respondent argues in the Appeal that the Hearing Officer should not have awarded Petitioner a rent refund and reduction based on the parking issue for the following reasons: (1) Petitioner only reported that her parking spot was blocked a handful of times; (2) each time Petitioner reported that her parking spot was blocked, Respondent "promptly dispatched a team member to address the issue"; and (3) Respondent eventually took proactive steps to address the recurring problem by hiring a private trash company. (Appeal Brief § A(3).)

Petitioner provided in her petition that the trash bin issue started in February 2021 and recurred weekly. (Petitioner's Exh. #3.) At the hearing, Petitioner also testified that the placement of the trash dumpsters had been an issue since the beginning of her tenancy and continued to be an issue on a weekly basis. Text messages between Respondent and Petitioner demonstrate that Petitioner reported the parking blockage issue on at least four occasions beginning in February 2022. (Petitioner's Exh. #9-B.) Documentary evidence submitted by Respondent demonstrates that they reached out to the waste management company about the issue sometime in August 2022. (Respondent's Exh. #11.) Texts from Petitioner to Respondent demonstrate that the dumpster placement issue continued to be an issue in November 2022. (Petitioner's Exh. #9-B.) At the time of the filing of the Petition in September 2023, the issue remained the same. (Petitioner's Exh. #3.) At the hearing, Brett Gavin, one of Respondent's representatives, testified that although they had communicated with the waste management company about the issue, they had bene told on numerous occasions that the only option was to continue to place the dumpsters in the same location for trash pickup. (Hearing Recording at 01:35:20-01:35:35.) Ms. Levin testified at the hearing that the new trash company had been hired and would begin servicing the property beginning December 2023. (Hearing Recording at 01:09:00-01:09:26.)

The foregoing is sufficient to support the Hearing Officer's determination that the dumpster placement and parking blockage issue had been an issue since the beginning of Petitioner's tenancy and continued to be an issue at least through the date of the hearing. While it may be true that Respondent reached out to their waste management company to discuss the issue, testimony from both Ms. Levin and Mr. Gavin at the hearing demonstrates that the situation was not resolved and ultimately required Respondent to hire a whole new company to service the property. As the Hearing Officer noted, "If Respondent would be able to assign a different and equally acceptable parking spot to Petitioner, they could remedy the situation." (HO Decision at pg. 16.) However, such a resolution was never considered or offered to Petitioner.

Because the Hearing Officer's decision applies the law correctly and is supported by sufficient evidence in the record, there has been no error or abuse of discretion.

D. Hearing Officer Did Not Err or Abuse Her Discretion in Holding that Respondent Must Reimburse Petitioner for Remainder of Plumbing Bill.

The Hearing Officer did not err or abuse her discretion in holding that Petitioner was not responsible for the clogged toilet and should therefore be fully reimbursed for the plumbing bill charged to her account.

Respondent argues that Petitioner should have to pay the remaining balance of the bill for the plumbing services provided to resolve the clogged toilet because Petitioner caused the issue. (Appeal Brief § A(4).) Respondent states that their plumber informed them that the damage and clogging were caused by wipes and female hygiene products, which had been disposed of improperly with their plastic wrapping. (*Id.*) As a result, Respondent contends, Petitioner is responsible for the costs of the repair under the terms of the lease agreement. (*Id.*)

At the Hearing, Petitioner testified that she and her family do not use wipes and did not flush wipes down the toilet. (HO Decision at pg. 6.) She stated that if they used wipes, then they would have an issue with the upstairs bathroom as well but there had never been any. (Hearing Recording at 00:43:30-00:44:35.) Feminine hygiene products were not raised as a cause of the clog at the time of the Hearing, and therefore any references to feminine hygiene products are excluded from consideration for the purposes of this Appeal. Petitioner also testified that she requested a copy of the plumber's invoice to determine whether there was a cause stated for the clog, and the documentation she received did not indicate the cause of the problem. (*Id*.) Respondent did not submit any documentation from their plumber stating the cause of the clog or demonstrating the reasonableness of the cost of the services.

In a petition hearing, a Hearing Officer has discretion to determine which "documents, testimony, written declarations and other evidence" is "credible and relevant to the requested rent adjustment." (CSFRA Regulations, ch. 5, § E(4).) It was reasonable for the Hearing Officer to balance the evidence as outlined above and conclude that the Petitioner's testimony that she was not responsible for the clogging was credible. Thereafter, the decision that Petitioner was not responsible for the remaining balance of the bill for the plumbing service was a logical conclusion.

E. Hearing Officer Did Not Award Petitioner Any Rent Refund or Reduction Based on the Pool Closures.

Respondent next disputes any responsibility "to reimburse the petitioner for the availability of the pool." In large part, section A.5 of the Appeal reiterates the Respondent's arguments, evidence and testimony from the hearing. However, as with the trash overflow issue, it is unclear why Respondent raises the pool closure issue on Appeal as the Hearing Officer concluded that the Petitioner had not met her burden of proof with regard to this issue. (HO Decision at pg. 17 ("There was a reduction in housing services, but Petitioner did not meet the burden of showing that the reduction was unreasonable in light of the cause and the time it took to remedy the loss of use of the pool. One must keep in mind that safety of the public, including tenants, is at issue with the pool. The record did not reflect any extended period where the Respondent failed to act or caused an unreasonable delay in responding to the issue. Therefore, Petitioner is not awarded any reduction in rent for this specific temporary reduction in housing services.").) Because the Hearing Officer concluded in favor of Respondent with regard to this issue, this decision does not address the arguments outlined in Section A.5 of the Appeal.

F. Hearing Officer Did Not Err or Abuse Her Discretion in Concluding that There Was a Reduction in Housing Services Based on the Condition of the Laundry Facilities.

The Hearing Officer did not err or abuse her discretion in concluding that there was a reduction in Housing Services based on the condition of the laundry facilities on the Property.

Respondent first argues that they should not be liable to Petitioner for the unavailability of the laundry room because there has been no observable decrease in income from the laundry facilities, indicating that the laundry machines continue to be used by the tenants. However, this information was never raised at the hearing and therefore was not available to the Hearing Officer at the time she made her decision. Even if it had been available, the information is too vague to reach a different conclusion than the one reached by the Hearing Officer. If the condition of the laundry facilities has always been poor, then maintenance of more or less the same income could just as well indicate that the condition has not improved or that the only people who use the laundry room are the tenants who lack other choices.

Respondent also notes that before they hired Anna's Cleaning Service to clean the laundry room on a weekly basis, they employed another handyman to visit twice a month to collect coins and report any issues. Respondent's purpose for sharing this information is unclear and does not in any way diminish the testimony from Petitioner, and her witness, [redacted], about the unsanitary and unusable condition of the laundry facilities, including repeatedly out-of-service machines, the photographs submitted by Petitioner demonstrating the condition of the laundry facilities, or even Respondent's own testimony that they have had trouble maintaining the condition of the laundry facilities due to break-ins and other related issues.

Finally, Respondent argues that Petitioner is not entitled to a rent refund or reduction for this issue because she never reported the issue to Respondent and because she was observed by two members of the maintenance team using the laundry room. For one, Petitioner testified at the Hearing that she does use the laundry room on emergency occasions, but that she must clean the laundry room before using it. (Hearing Record at 00:29:00-00:29:35.) As such, the observation by Respondent's employees aligns with Petitioner's own testimony. Further, while the CSFRA does require that tenant filing a petition must "demonstrate that the Landlord was provided with reasonable notice and opportunity to correct the correct" the issue (CSFRA § 1710(c)), there is no requirement that the tenant filing the Petition be the one who notified the landlord. In fact, Petitioner's witness, [redacted], testified that the condition had been brought to Respondent's attention by not only herself but also other tenants. (Hearing Record at 00:30:40-03:41:53.) As noted above, Respondent even testified that maintenance of the laundry facilities had been a longstanding issue of which they have been aware. Therefore, there was sufficient evidence in the record for the Hearing Officer to conclude that Petitioner had met her burden of proof to demonstrate Respondent was notified of the laundry issue and failed to adequately resolve the issue.

The Hearing Officer's holding that Respondent was liable to Petitioner for reduction in laundry facilities was supported by sufficient evidence in the record.

G. Hearing Officer Did Not Err in Concluding Respondent Had Demanded and Accepted Unlawful Rent Based on Improper Calculation of the Base Rent.

Respondent next argues that the Hearing Officer erred in considering and applying CSFRA Regulations Chapter 2 section (b)(2)(i). Respondent argues that the use of concessions "did not become illegal until the summer of 2022, which is more than a year after the Petitioner signed the lease" and states that the Rental Housing Committee did not mandate "retroactive adjustments to concessions." In essence, Respondent claims that because the Committee intended the regulation to go into effect on September 1, 2022, the regulation should not have been applied to the rent concessions and increases in the instant petition that were provided prior to that date.

However, Respondent's argument both wrongly assumes the intent of the Committee and incorrectly interprets the impact of the regulation. Therefore, the Hearing Officer did not err in considering both CSFRA Regulations Chapter 2 section (b)(2)(i) and CSFRA Regulations Chapter 2 section (b)(2)(ii) in reaching her decision. Paragraphs (i) and (ii) of CSFRA Regulations Chapter 2 section (b)(2) were adopted by the Committee on July 18, 2022. Paragraphs (i) and (ii) clarified the existing definition of "Base Rent" in the CSFRA and in Regulation Chapter 2 section (b)(2), which is applicable to any tenancy commencing after October 19, 2016. Petitioner's tenancy commenced on January 29, 2021; therefore, the "Base Rent" definition in CSFRA Regulations Chapter 2 section (b)(2) is applicable.

Respondent is correct that the Committee discussed a September 1, 2022 date at the time of adoption of these regulations. However, the Committee did so in the context of how concessions provided before or after that date would be treated for the purposes of downward adjustment of rent petitions. Simultaneous with the adoption of CSFRA Regulations Chapter 2 section (b)(2)(i) and Regulation Chapter 2 section (b)(2)(ii), the Committee also adopted Regulation Chapter 4 section (G)(6) to place certain limitations on a Tenant's ability to collect back rent where the Tenant files an unlawful rent petition related to rent concessions. CSFRA Regulations Chapter 4 section (G)(6) reads as follows:

> "6. Limitations on Unlawful Rent Petitions. Where a Petition for an Individual Rent Adjustment would reduce rent based on the alleged collection of unlawful Rents related to "rent concessions," as that term is defined in Chapter 2 of these Regulations, the following limitations shall apply:
>
> a. For rent concessions provided for a Tenancy that commenced before September 1, 2022, a Tenant shall be entitled to a rollback to the Base Rent and a refund of only the Rent that was overpaid within one (1) year prior to the date of the filing of the Petition.
>
> b. For rent concessions provided for a Tenancy that commenced on or after September 1, 2022, the Tenant shall be entitled to a rollback to the Base Rent and a refund of any Rent that was overpaid, subject to applicable statutes of limitations in State law.
>
> c. A former Tenant may file a Petition for an Individual Rent Adjustment based on alleged collection of unlawful Rent related to "rent concessions" so long as the Petition is filed within six (6) months of the date that the Tenant vacated the Rental Unit."

Construed together, CSFRA Regulations Chapter 2 sections (b)(2)(i)-(ii) and Chapter 4 section (G)(6) clearly indicate that the Committee intended for the amendments to apply not only to rent concessions offered for tenancies commencing on or after September 1, 2022, but also to rent concessions offered for tenancies that commenced between October 19, 2016 and September 1, 2022. However, for tenancies that fall within the latter category, such as Petitioner's tenancy of the Property, the Landlord is liable for a refund of only the rent overpaid within one (1) year prior to the date of the filing of the Petition. Applying these rules to the instant case, the Hearing Officer correctly concluded that the Petitioner was entitled to a downward adjustment of rent to the corrected Base Rent as well as a refund of any Rent that had been overpaid since September 1, 2022. The rent refund ordered by the Hearing Officer fell within the one-year lookback period authorized by CSFRA Regulations Chapter 4 section (G)(6) for tenancies that commenced between October 19, 2016 and September 1, 2022.

It is also worth noting that the regulations adopted by the Committee did not “make concessions illegal.” Rather, CSFRA Regulations Chapter 2 section (b)(2)(i) and (ii) provide additional clarification of the existing and already applicable definition of Base Rent where concessions are provided during the initial term of the tenancy. CSFRA § 1702(b) provides that the definition of "Base Rent" for tenancies commencing after October 19, 2015 "shall be the initial rental rate charged upon initial occupancy, provided that amount is not in violation of [the CSFRA] or any provision of state law." The Act further clarifies that the "term 'initial rental rate' means only the amount of Rent actually paid by the Tenant for the initial term of the tenancy." (CSFRA § 1702(b)(2) (emphasis added).) CSFRA Regulation Chapter 2, section (b)(2) adopts and restates

the CSFRA definition of "Base Rent" verbatim but paragraphs (i) and (ii) expound further on this definition to provide both Landlords and Tenants with guidance about how Base Rent has always been and should be calculated when rent concessions are provided during the initial term of the tenancy.

The Hearing Officer's calculations of the Base Rent and the rent refund comport with the requirements of the CSFRA and the Regulations. Therefore, there was no error.

V. Conclusion

As detailed above, the RHC denies the appeal in its entirety and affirms the Decision in its entirety:

1. The Petitioner is entitled to a downward adjustment in rent to the correctly calculated Base Rent of Two Thousand Three Hundred Fifty-Eight Dollars and Thirty-Three Cents ($2,358.33.)

2. Petitioner was entitled to a rent refund of $4,686.84 for the 12-month period from September 2022 through August 2023, a rent refund of $1,171.71 for the 3-month period after she filed her petition, and a rent refund of $390.57 per month for any months after December 2023 for which she has paid or does pay more than the lawful Base Rent of $2,358.33.

3. The Petitioner is entitled to a rent refund in the amount of $956.63 for the period from October 2022 through the date of the hearing, plus any Utilities Charges paid to Respondent through the time that this decision is final. Respondent shall stop charging Petitioner for Utilities Charges upon this decision becoming final.

4. The Petitioner is entitled to a refund of $25.00 for an improperly charged NSF fee, a refund of $300.00 in improperly charged late fees, and a refund of any other late fees associated with nonpayment of Utilities Charges. Respondent shall correct the rent ledger and refund the NSF fee of $25.00 and any late fees actually paid by Petitioner for nonpayment of utilities through the time that this decision is final.

5. Petitioner is entitled to a rent refund of $1,200.00 for the 12-month period from January 2023 through December 2023, a rent refund of $100 per month for any month since January 2024 that the bathtub, shower, and sink remained in disrepair, and an ongoing rent reduction of $100 per month for every month hereafter until the peeling bathtub, shower, and sinks are replaced. The sinks and bathtub must be replaced within thirty (30) days of this decision becoming final.

6. Petitioner is entitled to a rent refund of $200.00 for the 8-month period from May 1, 2023 through December 2023, rent refund of $25.00 per month for any month since January 2024 that the toilet and sinks have continued leaking, and an ongoing rent reduction of $25.00 per month for every month hereafter that the toilet and sinks are not replaced.

7. Petitioner is entitled to a rent refund of $3,500.00 for the 35-month period from February 2021 through December 2023, rent refund of $100.00 per month for any month since January 2024 that Petitioner's access to her parking space has been obstructed by the dumpsters, and an ongoing rent reduction of $100.00 until such time that Petitioner is provided with proper access to her assigned parking spot at all times.

8. Petitioner is entitled a refund or credit of $400.00 for the remaining balance of plumbing bill (after the $450.00 credit posted in February 2023).

9. Petitioner is entitled to a rent refund of $950.00 for the 19-month period from June 2022 through December 2023, a rent refund of $50.00 per month for every month since January 2024 that the laundry facilities have been inaccessible, unsafe or unsanitary, and an ongoing rent reduction of $50.00 per month until fully accessible, clean and safe laundry facilities are provided.