

Rental Housing Committee
Tentative Appeal Decision

Appeal No. 18190037

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

I. Summary of Proceedings

Rachel Moericke ("**Appellant-Tenant**") submitted a petition for downward adjustment of rent dated October 1, 2018 applicable to unit number three (the "**Petition**"), which is located at 1851 Latham Avenue (the "**Unit**" and "**Property**," respectively). The Petition was accepted by RHC staff on October 2, 2018.

The Property owner and manager (MBR LLC, Vipin Gupta, and Sapna Agarwal) (collectively, "**Respondent-Landlord**") submitted a response in opposition to the Petition dated October 29, 2018.

The Petition was assigned to Hearing Officer Jeffrey P. Blum (the "**Hearing Officer**"). The Hearing Officer presided over a public hearing on November 8, 2018, in which the Appellant-Tenant and Respondent-Landlord participated. The hearing was recorded and is available as a part of the administrative record.

The Hearing Officer decision dated December 11, 2018 was delivered on or about that date (the "**Decision**").

A timely appeal of the Decision was received from Appellant-Tenant on December 21, 2018. A subsequent timely appeal of the Decision was also received from Respondent-Landlord on December 21, 2018.

II. 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.

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 Tentative Appeal Decision identifies the elements of the Decision that are subject to

appeal by the Appellant-Tenant and the Respondent-Landlord. The Tentative Appeal Decision regarding each appealed element is provided in Section IV of this Tentative Appeal Decision.

The Appellant-Tenant contests three elements of the Decision: (A.1) "Requesting clarification on the amount of rent to be charged for the unit and how this applies to each cotenant;" (A.2) "Requesting that Petitioner not be held liable for the June 2017 rent;" and (A.3) "Clarifying the tenant's rent split agreement with respect to the ruling."

The Respondent-Landlord contests two elements of the Decision: (B.1) requesting authorization of the 2016 annual general adjustment enacted by RHC Resolution Number 18 (2018); and (B.2) regarding management expenses.

Relevant information from the Petition, Decision, and appeal for each contested element is provided below.

A. Appellant-Tenant Appeal Elements

1. Applicable Rent for the Unit and Apportionment

Section IX, subsection 7 of the Decision states: "The Petitioner shall only be liable for the Base Rent plus allowable AGAs for the Unit as detailed on Appendix A (e.g. beginning January 2019, Petitioner's lawful rent amount is the same as the amount detailed for each of September, October, November and December 2018 in Appendix A.)" The column labeled "Base Rent + Allowable AGAs" lists \$2,410.25 for September through December 2018.

Appellant-Tenant requested further clarification. Appellant-Tenant states that Respondent-Landlord requested \$2,620 as the monthly rent for the Unit for January 2019. Appellant-Tenant further notes that, "The decision appears to honor that there was a 50/50 split arrangement between co-tenants . . ." Appellant-Tenant then discusses the appeal element A.2.

2. Liability for June 2017 Rent

Section VI ("Findings of Fact") subsection e of the Decision states, "One-half of the rent for the subject unit for June 2017 is due to Landlord." Sections I ("Statement of the Case") and VII ("Discussion") discuss an alleged agreement between Appellant-Tenant and Respondent-Landlord regarding the rent for June 2017. Both sections state that the Respondent-Landlord denies that an agreement existed regarding rent for June 2017. Section IX ("Decision") subsection 4 of the Decision states: "The amounts due to Petitioner shall be less \$1025, representing unpaid, lawfully collectible rent for June 2017 for which Petitioner is liable."

Appellant-Tenant states that a separate agreement exists between Appellant-Tenant and Respondent-Landlord regarding the amount of rent applicable for June 2017.

3. Apportionment of Rent Among Cohabitants

The first paragraph of the Attachment to the Petition for downward adjustment states, "Please note, I'm solely petitioning for the recovery of unlawfully paid rent for myself, Rachel Moericke, and not roommates that lived in the residence during the petition period."

Section VII ("Discussion") of the Decision discusses Appellant-Tenant's practice of paying fifty percent (50%) of the rent directly to Respondent-Landlord, while another cohabitant of the Unit pays the other fifty percent (50%). The Decision further states, "[Appellant-Tenant] seeks a rollback of only 50% of the rent."

Appellant-Tenant states, "If a 50/50 split agreement [among cohabitants] is not acknowledged in the decision, and the [Appellant-Tenant] is being obligated to pay the entire month's rent, then all months should be treated equally and the full rollback for unlawful excess rent paid (instead of half) should be paid to the [Appellant-Tenant] for the months where evidence shows [Appellant-Tenant] paid the full month's rent."

B. Respondent-Landlord Appeal Elements

1. 2016 Annual General Adjustment

The Decision does not discuss the 2016 Annual General Adjustment enacted by RHC Resolution Number 18, 2018.

Respondent-Landlord requests the 2016 Annual General Adjustment be applied to the rent calculations.

2. Management Expenses

Section III ("Evidence") identifies an email from Respondent-Landlord dated November 16, 2018 with attachment entitled "Management Cost Spreadsheet [sic] – Rachel M" was "offered but not accepted into evidence." Section VII ("Discussion") of the Decision states the following regarding the document that was submitted but not accepted into evidence.

The [Respondent-Landlord's] documents concerning alleged management expenses submitted after the hearing, are irrelevant to this petition but could be relevant for purposes of a petition for upward rent adjustment. Furthermore, the submission was made eight days after the Hearing's adjournment and good cause was not found to re-open the Hearing record. [Respondent-Landlord] has or had a separate right to petition for a fair rate of return, alleging these expenses warrant a rent increases, pursuant [to] Section 1710(a)(2).

Respondent-Landlord requests the information in the exhibit "be included in the calculations" without further explanation. Respondent-Landlord further states, "Undue pressure and harassment on Management by [Appellant-Tenant], by costing management time & money. Unreasonable request and false claims by [Appellant-Tenant] which [Respondent-Landlord] has to constantly spend time & money to prove otherwise." Respondent-Landlord does not identify

how or in what way management expenses and the alleged "undue pressure and harassment" should modify the calculations included in the Decision and Attachment A.

IV. Tentative Decision Regarding Appealed Elements

Appellant-Tenant has continuously resided in the Unit since 2012. (Decision, Discussion, § VII, ¶ 3.) Many of the appealed elements of the Decision from both parties relate to Appellant-Tenant's status as one tenant continuously occupying the Unit, along with other cohabitants in the same Unit since 2012. For clarity, a summary of the relevant rental history of the Unit is provided below based on Hearing Officer Exhibit 1 (Petition).

Date	Action
December 2012	Appellant-Tenant moves into Unit with Cohabitant 1.
March 2014	Effective date of written extension agreement including Cohabitant 1.
March 2015	Effective date of written agreement, including Cohabitant 2; rent will be \$2,250 per month effective April 2015.
June 2016	Effective date of written agreement, including Cohabitant 3; rent is purportedly \$2,450 per month
July 2017	Effective date of written agreement, including Cohabitant 4; rent will purportedly be \$2,530 per month effective October 2017.

Many of the appeal elements question the legal status of Appellant-Tenant and application of the CSFRA amidst various written agreements that maintain Appellant-Tenant is a lawful occupant, name additional lawful occupants, and provide for various rent increases.

The Decision concludes in part, "the rent rollback provisions of the CSFRA apply to [Appellant-Tenant] as any purported increase in rent pursuant to new leases would appear to be waivers of [Appellant-Tenant's] right to renew the tenancy at the lawful rent and such waiver are void pursuant to CSFRA section 1713." (Decision, Discussion, § VII, ¶ 3) CSFRA section 1713 is quoted below for reference.

Non-Waivability. "Any provision of a Rental Housing Agreement, whether oral or written, which purports to waive any provision of this Article established for the benefit of the Tenant, shall be deemed to be against public policy and shall be void."

Neither the Appellant-Tenant nor the Respondent-Landlord appealed the conclusion that the rent increases effective in June 2016 and July 2017 were void based on CSFRA section 1713. With this context, each appealed element of the Decision is discussed below.

A. Appellant-Tenant Appeal Elements

1. Applicable Rent and Apportionment

The Decision's reversal of the June 2016 and July 2017 rent increases appears to presume that in lieu of the unlawful rent increases, Respondent-Landlord would receive the annual general adjustments as authorized for 2017 and 2018.

Appendix A to the Decision provides a concise accounting of the amounts paid for and the lawful rent applicable to the Unit from the first application of the CSFRA, including the annual general adjustments in 2017 and 2018. A reformatted portion of that table is attached as Exhibit 1, for reference.

Appellant-Tenant requests clarification regarding the lawful rent applicable to the Unit. The Decision indicates the lawful rent for the Unit is \$2,410.25 per month (*see* Decision, Appendix A). The Decision states that the monthly rental amount for the Unit on October 19, 2015 was \$2,250. Appendix A and Exhibit 1 incorporate annual general adjustments on September 1, 2017 (3.4%) and September 1, 2018 (3.6%), which percentage increases to the rent effective on October 19, 2015 results in a lawful rent of \$2,410.25.

Accordingly, the Appellant-Tenant's request for clarification is granted. The underlying math as shown in Appendix A to the Decision is thus **affirmed** and restated in Exhibit 1; to the extent this Tentative Appeal Decision clarifies the monthly rent applicable to the unit, the decision is modified.

Appellant-Tenant further requests clarification regarding apportionment of the rent among the cohabitants of the Unit. The Decision does not directly address apportionment among cohabitants of the Unit but does note that Appellant-Tenant's Petition requested only that portion of the unlawful rent paid by Appellant-Tenant. The Decision found that Appellant-Tenant paid fifty percent of the rent received for the Unit during the effective dates of the CSFRA, with the exception of June 2017. (Decision, Findings of Fact, §§ VI.c, VI.d, and VI.e.)

Appellant-Tenant does not cite to any section of the CSFRA or implementing regulations regarding apportionment of Unit rent among lawful cohabitants. Because Appellant-Tenant expressly requested only a portion of the unlawful rent paid since the effective date of the CSFRA and because any other cohabitants of the Unit are not a party to the Petition or this Appeal, affirmatively apportioning Unit rent among Appellant-Tenant and any other cohabitant appears both unnecessary and lacking in legal support. Accordingly, the Appellant-Tenant's request for clarification regarding apportionment of the lawful Unit rent is denied.

2. Liability for June 2017 Rent

Distinct from the issue of apportionment, the Decision found that one-half of the rent for the Unit was due and owing from June 2017. (Decision, Findings of Fact, § VI.e.) The Decision acknowledges contested evidence in the record alleging that the unpaid rent was actually waived by Respondent-Landlord. (Decision, Statement of the Case, §I, ¶ 3.) The Decision indicates that

the Hearing Officer was unpersuaded by this evidence, concluding "the alleged oral agreement with the [Respondent-Landlord] for payment of [Cohabitant 3's] last month's rent . . . [is] unenforceable under the lease, [and] is not proper." (Decision, Discussion, §VII, ¶ 4.)

In support of the appeal of this conclusion, Appellant-Tenant summarizes the alleged agreement regarding rent for June 2017 as referenced in Hearing Officer Exhibit 1 (Petition) and discussed during the Hearing (discussion beginning approximately 45:30). No legal argument is provided in support of Appellant-Tenant's request for reversal of the Hearing Officer's determination that contested evidence of an alleged agreement regarding rent for June 2017 is unenforceable and improper.¹ Accordingly, Appellant-Tenant's request to reverse the finding of liability for outstanding June 2017 rent is denied. The Decision concluding rent is due for June 2017 and reducing the award for unlawful rent to Appellant-Tenant in the amount of \$1,025 is **affirmed** and an apparent typographical error on page five of the Decision is modified. (Decision, Discussion, §VII, ¶ 4 (deleting the number \$1,225 and replacing it with \$1,025).)

3. Apportionment of Rent Among Cohabitants

As discussed in section IV.A.1 above, neither the CSFRA nor the implementing regulations currently address apportionment of Unit rent among cohabitants. To the extent Appellant-Tenant requests the RHC provide guidance regarding apportionment via the hearing and appeal process, this Tentative Appeal Decision denies such request.

Appellant-Tenant further requests that because the Decision found liability for June 2017 rent, the initial request in the Petition for the return of a pro-rated portion of the unlawful rent should be ignored. This request to modify the Petition is not supported by any legal theory; any dispute with or among cohabitants of the Unit is beyond the scope of this Tentative Appeal Decision because it is beyond the scope of the Petition and Decision and also because the cohabitants are not parties to the Petition, Decision, or Appeal. Accordingly, Appellant-Tenant's request is denied, and the Decision is **affirmed**.

B. Respondent-Landlord Appeal Elements

1. 2016 Annual General Adjustment

As discussed in section IV.A.1 above, the Decision appears to presume that in lieu of the unlawful rent increases, Respondent-Landlord would receive the annual general adjustments (AGAs) as authorized for 2017 and 2018. The Decision does not make this presumption explicit and does not cite evidence in the record that supports such a presumption.

Respondent-Landlord appeals the application of the AGAs as identified in Appendix A of the Decision and requests application of the 2016 AGA. Respondent-Landlord does not indicate

¹ Appellant-Tenant does note that California law requires notice be provided to terminate a tenancy and states that Cohabitant 3 did not provide adequate notice prior to vacating the Unit which resulted in the deficient payment of June 2017 rent. Any dispute between and among Appellant-Tenant and the former cohabitants of the Unit are beyond the scope of this Tentative Appeal Decision.

when the 2016 AGA should be applied or provide any argument why the 2016 might be applicable.

Rental Housing Committee resolution 18 (2018) provides for a banked 2016 AGA, subject to various conditions, including continuous ownership of the property since October 19, 2015, that the Unit was not subject to a rent increase between October 19, 2015 and December 23, 2016, and special notice to affected tenants and the Rental Housing Committee pursuant to CSFRA section 1707(d) and Regulation Chapter 7, section B.2. Because there is insufficient evidence in the record of compliance with the conditional authorization of the 2016 AGA and because this request appears to be raised for the first time on appeal, Respondent-Landlord's request is denied. Accordingly, as stated in section IV.A.1, the underlying math as shown in Appendix A to the Decision is **affirmed** as restated in Exhibit 1.

2. Management Expenses

As discussed in Section III.B.2, management expenses were submitted to and reviewed by the Hearing Officer prior to issuance of the Decision and were excluded for lack of relevance. The CSFRA regulates rent increases, providing that increases are allowed pursuant to an annual general adjustment and/or a petition for upward adjustment. (CSFRA § 1706(b).) As noted in the Decision, management expenses are relevant to petitions for upward adjustment.

Respondent-Landlord does not cite to any section of the CSFRA or implementing regulations regarding incorporation of management expenses within a petition for downward adjustment based on the unlawful collection of rent. Furthermore, Respondent-Landlord provides no guidance or indication as to how the purported management expenses should impact the calculation of rent, whether lawful or unlawful. Accordingly, the request to incorporate management expenses as a component of a petition for downward adjustment is denied and the exclusion of the management expense document from evidence is **affirmed**.

V. Conclusion

As detailed above, the RHC grants in part and denies in part Appellant-Tenant's appeal of the Decision. The RHC denies in whole Respondent-Landlord's appeal of the Decision.

A.1 The Appellant-Tenant's request for clarification of the lawful rent applicable to the Unit is granted. The Decision of the Hearing Officer calculating the lawful rent applicable to the Unit is **affirmed** as restated in Exhibit 1 to this Tentative Appeal Decision.

A.2 The Appellant-Tenant's request to reverse the Decision of the Hearing Officer finding liability for outstanding rent from June 2017 is denied; the finding of liability is **affirmed** and \$1,025 shall be deducted from the award of unlawful rent to the Appellant-Landlord.

A.3 The Appellant-Tenant's request to apportion rent among cohabitants of the Unit is denied. The Decision of the Hearing Officer omitting discussion of apportionment among individuals who are not party to the Petition or Decision is **affirmed**.

B.1 The Respondent-Landlord's request for an unspecified application the 2016 annual general adjustment pursuant to Rental Housing Committee Resolution 18 (2018) is denied. The Decision of the Hearing Officer calculating the lawful rent applicable to the Unit is **affirmed** as restated in Exhibit 1 to this Tentative Appeal Decision.

B.2 The Respondent-Landlord's request for an unspecified incorporation of management expenses as a component of Appellant-Tenant's petition for downward adjustment of rent is denied. The Decision of the Hearing Officer calculating the lawful rent applicable to the Unit is **affirmed** as restated in Exhibit 1 to this Tentative Appeal Decision.

Accordingly, the Decision of the Hearing Officer is affirmed and Appellant-Tenant is entitled to refund of \$2,149.52 through December 2018, Appellant-Tenant is liable for unpaid rent totaling \$1,025, and so Appellant-Tenant is entitled to a net award of \$1,124.52 through December 2018 from Respondent-Landlord. Furthermore, Appellant-Tenant is entitled to pro-rata refund of any rent paid for January 2019 in excess of \$2,410.25.

Respondent-Landlord is instructed to charge only the lawful rent of \$2,410.25 per month for the Unit until a rent increase is authorized and duly noticed pursuant to: (1) the 2019 annual general adjustment on September 1, 2019, and/or (2) a petition for upward adjustment in accordance CSFRA section 1710(a).

EXHIBIT 1

Rent History

Rental Period	Lawful Rent (Base Rent + AGAs)	Total Rent Paid
12/23/2016 - 12/31/2016	653.23	711.29
2017	January	2,250.00
	February	2,250.00
	March	2,250.00
	April	2,250.00
	May	2,250.00
	June	2,250.00
	July	2,250.00
	August	2,250.00
	September	2,326.50
	October	2,326.50
	November	2,326.50
	December	2,326.50
2018	January	2,326.50
	February	2,326.50
	March	2,326.50
	April	2,326.50
	May	2,326.50
	June	2,326.50
	July	2,326.50
	August	2,326.50
	September	2,410.25
	October	2,410.25
	November	2,410.25
	December	2,410.25